

THE
3
CELEBRATED SPEECH
OF THE
Hon. T. ERSKINE,
IN SUPPORT OF THE
LIBERTY OF THE PRESS.

DELIVERED AT GUILDHALL, December 18, 1792.

To which is prefixed, a Preface by a Scotch Member of Parliament.

TAKEN IN SHORT HAND, BY GURNEY, THE PRINCIPAL SHORT
HAND WRITER IN LONDON.

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THE NATIONAL ANTHROPOLOGICAL ARCHIVES

AMERICAN MUSEUM OF NATURAL HISTORY

NEW YORK, N. Y.



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FROM THE NATIONAL ANTHROPOLOGICAL ARCHIVES

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NEW YORK, N. Y.

1900

INTRODUCTION.

OF all the extraordinary phænomena which distinguish the present most singular period, there is none more remarkable than the striking resemblance which it bears in many points to that of the Reformation. When the usurpations of the Roman Pontiffs grew intolerable to princes and to nations, when virtue and morality were trampled under the feet of depraved and abandoned clergy, when honour, property, and even existence lay at the mercy of an infamous priesthood, God graciously rescued mankind by permitting them to discover the Art of Printing. Truth needs but to be known, to be followed; error vanishes before the light; the publication of the Bible in the vulgar tongues of the several countries of Europe, shook the Papal despotism to its foundations; freed the several nations from its yoke, and mitigated the slavery of those who still remained under its dominion. But these great events, so conducive to the happiness and improvement of mankind, were not accomplished without the severest struggles: the *powers that were*, felt that their throne was built on *ignorance*; that *knowledge* was their greatest enemy; and their grandest and most persevering efforts were made to prevent its diffusion. Fortunately for the world, every endeavour to stifle the curiosity of man, only excites and redoubles it: every check given to the desire of information, effectually spreads it; and all the bulls of the Pope, and edicts of tyrants, which were issued against the promulgation of the Holy Gospel, only served as so many proclamations to the people to read them. I do not know by what fatality it happens, but it certainly is true, that the same jealousy of the encreasing knowledge of the people, which then agitated the Court of Rome with respect to matters of religion, seems at present to pervade every Court in

Europe with respect to the nature and principles of civil government. If we can trust to public report, in Spain, in Germany, in Russia, in Italy, books of certain descriptions are strictly prohibited, and the severest punishments are denounced against those who import or read them: they are nevertheless read; for Voltaire used to say, that his works never sold so well, as after they were burnt by the hands of the common hangman. But the most astonishing circumstance in this war against knowledge is, that the Liberty of the Press should have found so many enemies in Great Britain. In that happy land, which owes its boasted liberty and constitution, and all its consequent prosperity to freedom of discussion; associations have been formed to stifle it, and as far as their power can reach, to keep the great body of the people in utter darkness regarding their civil rights.

There is a malignity in the principles and designs of these associations, (which however were begun, and are continued under the patronage of a Cabinet Minister,) that cannot be too much exposed and reprobated. They do not pretend to be able to prevent the higher classes of the community from reading any books they choose; but they set their faces against the instruction of the poor. They advertise rewards, they subscribe money to prosecute the vendors, or purchasers of cheap publications on the topics of liberty: while, at the same time, they expend considerable sums in disseminating every production which can exalt the monarchical part of the constitution.

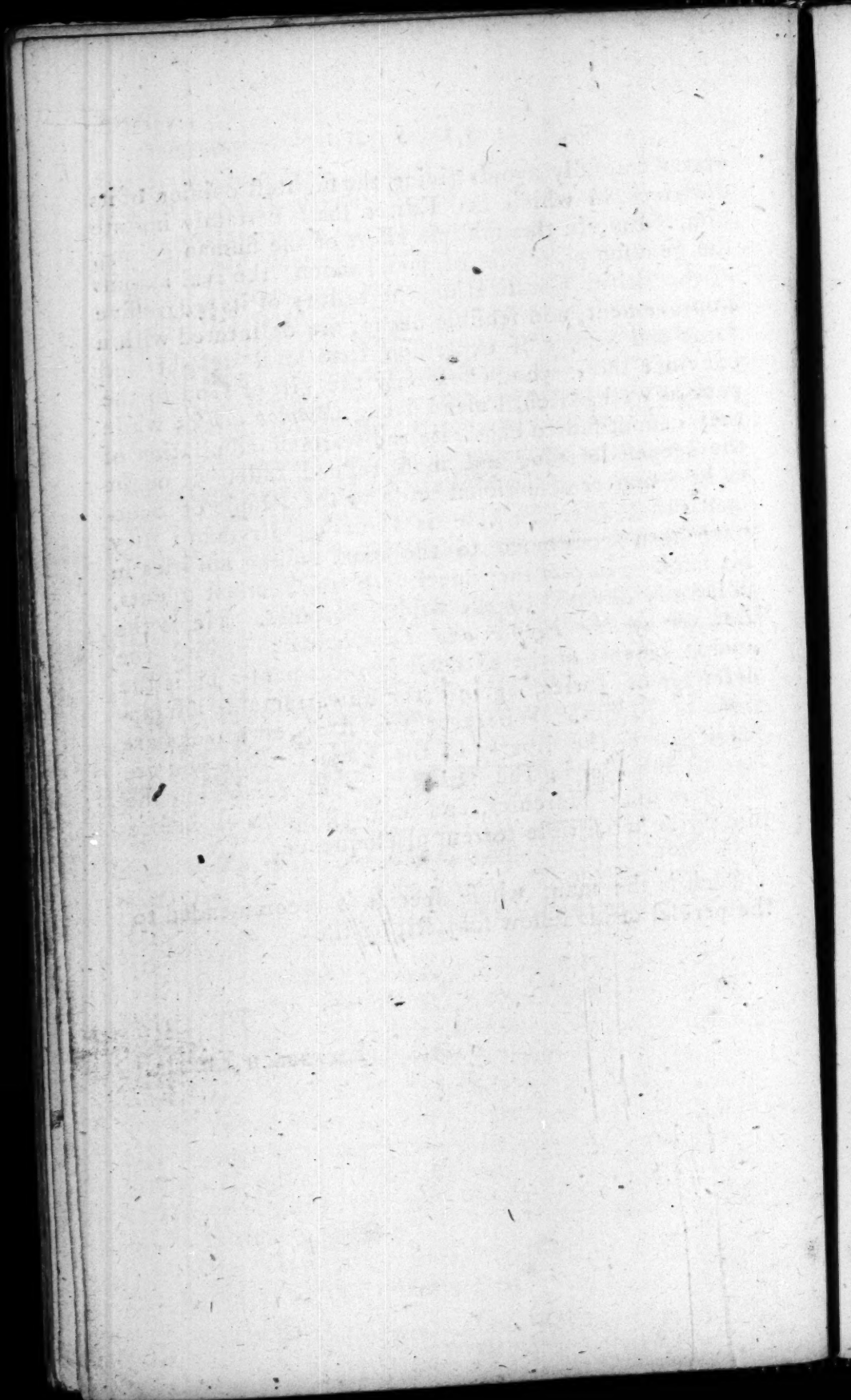
These considerations have been sufficient to induce me, to offer to the public, a cheap edition of the famous speech pronounced by the Hon. Thomas Erskine, on the trial of the celebrated Thomas Paine, for publishing his work called "the Rights of Man." It is fit that the glorious doctrines contained in this most finished piece of oratory should be known to every man in these kingdoms; that the people may know where to bestow their own admiration, and to point the gratitude of their posterity.

It is necessary, however, to remind our readers, that this speech is not a defence of Mr. Paine's book; the

orator carefully avoids giving the slightest opinion of its doctrines, in which his Editor shall certainly imitate him. But, in this sublime effort of the human genius, the genuine principles of social union, the real axioms of the British Constitution, the history of its progressive improvement, and sensible decay, are delineated with a force and beauty of expression that must delight and convince those who possess only the gift of God to the poor as well as rich, I mean strong *Common Sense*; while they cannot fail to captivate the warmest admiration of the deepest learning and most refined taste. It ought to be a matter of national pride to the People of Scotland, that Mr. Erskine is their countryman: they have been accustomed to the most shining abilities in his family; in *him* they meet with transcendant talents, uniformly devoted to the noblest purposes. He is the *Lawyer of the People and Constitution*; against the encroachments of the executive government: he is the defender of Juries, against the unwarrantable assumptions of Judges. Wherever the strongest attacks are made against the liberty of the subject, there you are sure to find him in the foremost rank, combating the monsters like Hercules, and bearing down all before him by an irresistible torrent of eloquence.

Such is the man, whose speech is recommended to the perusal of his fellow-subjects, by the

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Gentlemen of the Jury,

THE Attorney General, in that part of his address which arose from a letter, supposed to have been written to him from France, exhibited signs of strong sensibility and emotion. I do not, I am sure, charge him with acting a part to seduce you; on the contrary, I am persuaded from my own feelings, and from my acquaintance with my friend from our childhood upwards, that he expressed himself as he felt. But, gentlemen, if he felt those painful embarrassments, think what mine must be: he can only feel for the august Character whom he represents in this place, as a subject for his Sovereign, too far removed by custom, and by law, from the intercourses which generate affections, to produce any other sentiments than those that flow from a relation common to us all. But it will be remembered, that I stand in the same relation* towards another Great Person, more deeply implicated by this supposed letter; who, not restrained from the cultivation of personal attachment by those qualifications which must always secure them, has exalted my duty of a subject to a Prince, into a warm and honest affection between man and man. Thus circumstanced, I certainly should

* Mr. Erskine is Attorney General to the Prince of Wales.

have been glad to have had an earlier opportunity of knowing correctly the contents of this letter, and whether (which I positively deny) it proceeded from the defendant. Coming thus suddenly upon us, I see but too plainly the impression it has made upon you who are to try the cause, and I feel its weight upon myself, who am to conduct it; but this shall neither detach me from my duty, nor added to all the other difficulties that thicken around me, enervate me, (if I can help it) in the discharge of it.

Gentlemen, if the Attorney General is well founded in the commentaries he has made to you upon this book which he prosecutes; if he is warranted by the law of England, in repressing its circulation through these realms, from the illegal and dangerous matters contained in it; if that suppression be, as he avows it, and as in common sense it must be, the sole object of the prosecution, the public has great reason to lament that this letter should have been at all brought into the service of the cause: it is no part of the charge upon the record; it had no existence for months after the work was composed and published; it was not even written, if written at all, till after he had been at Dover, in a manner insultingly expelled from the country by the influence of government, and had become the subject of another country. It cannot, therefore, by any fair inference, even decypher the mind of the author when he composed his work; still less can it affect the construction of the language in which the work itself is written. The introduction of this letter at all is, therefore, not only a departure from the charge, but a sort of dereliction of the object of the prosecution, which is to condemn the book: for if the condemnation of the author is to be obtained, not by the work itself, but by collateral matter not even existing when it was written, nor known to its various publishers throughout the kingdom, how can a verdict upon such grounds condemn the work, or criminate other publishers, strangers to the collateral manner on which the conviction may be obtained? I maintain, therefore, that, upon every principle of sound policy, as it affects the interests of the crown, and upon every rule of justice, as it affects the

author of the Rights of Man, the letter should be wholly dismissed from your consideration.

Gentlemen, the Attorney General has thought it necessary to inform you, that a rumour had been spread, and had reached his ears, that he only carried on the prosecution as a public prosecutor, but without the concurrence of his own private judgment; and therefore to add the just weight of his own character to his public duty, and to repel what he thinks a calumny, he tells you that he should have deserved to have been driven from society, if he had not arraigned the work and the author before you.

Here too we stand in situations very different. I have no doubt of the existence of such a rumour, and of its having reached his ears, because he says so; but for the narrow circle in which any rumour, personally implicating my learned friend's character, has extended, I might appeal to the multitudes who surround us, and ask, which of all them, except the few connected in office with the Crown, ever heard of its existence. But with regard to myself, every man who hears me at this moment, nay, the whole People of England, have been witnesses to the calumnious clamour that, by every art, has been raised and kept up against me: In every place, where business or pleasure collect the public together, day after day my name and character have been the topics of injurious reflection. And for what—only for not having shrunk from the discharge of a duty which no personal advantage recommended, and which a thousand difficulties repelled. But, gentlemen, I have no complaint to make, either against the printers of these libels, nor even against their authors; the greater part of them, hurried perhaps away by honest prejudices, may have believed they were serving their country by rendering me the object of its suspicion and contempt; and if there have been amongst them others who have mixed in it from personal malice and unkindness, I thank God I can forgive them also. — Little indeed did they know me, who thought that such proceedings would influence my conduct: I will for ever, at all hazards, assert the dignity, independence, and integrity of the ENGLISH BAR; without which, impartial

justice, the most valuable part of the English constitution, can have no existence. For, from the moment that any advocate can be permitted to say, that he will or will not stand between the crown and a subject arraigned in the court where he daily sits to practise, from that moment the liberties of England are at an end. If the advocate refuses to defend, from what he may think of the charge or of the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of, perhaps, a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very Judge to be his counsel.

Gentlemen, it is now my duty to address myself regularly, and without digression to the defence. And the first thing which presents itself in the discussion of a judicial subject, and indeed of every other, is to state distinctly, and with precision, what the question is, and (where prejudice and misrepresentation have been exerted), to distinguish it accurately from what it is not. The question then is ~~not~~ whether the constitution of our fathers, under which we live—under which I present myself before you, and under which alone you have any jurisdiction to hear me,—be or be not preferable to the constitution of America or France, or any other human constitution. For upon what principle can a court, constituted by the authority of any government, and administering a positive system of law under it, pronounce a decision against the constitution which creates its authority; or the rule of action which its jurisdiction is to enforce? The common sense of the most uninformed person must revolt at such an absurd supposition.

I have no difficulty, therefore, in admitting, that if by accident some or all of you were alienated in opinion and affection from the forms and principles of the English government, and were impressed with the value of that unmixed representative constitution which this work recommends and inculcates, you could not, on that account, acquit the defendant. Nay, to speak

out plainly, I freely admit, that even if you were avowed enemies to monarchy, and devoted to republicanism, you would be nevertheless bound by your oaths, as a jury sworn to administer English justice, to convict the author of the Rights of Man, if it were brought home to your consciences, that he had exceeded those widely extended bounds which the ancient wisdom and liberal policy of the English constitution have allotted to the range of a free press. I freely concede this, because you have no jurisdiction to judge either the author or the work, by any rule but by the English law, which is the source of your authority. But having made this large concession, it follows, by a consequence so inevitable as to be invulnerable to all argument or artifice, that if, on the other hand, you should be impressed (which I know you to be) not only with a dutiful regard, but with an enthusiasm, for the whole form and substance of your own government; and though you should think that this work, in its circulation amongst classes of men unequal to political researches, may tend to alienate opinion, still you cannot, upon these grounds, without a similar breach of duty, convict the defendant of a libel, unless he has clearly stepped beyond that extended range of communication which the same ancient wisdom and liberal policy of the British constitution has allotted for the liberty of the press.

Gentlemen, I admit, with the Attorney General, that in every case where a court has to estimate the quality of a writing, the mind and intention of the writer must be taken into account the *bona*, or *mala fides*, as lawyers express it, must be examined: for a writing may undoubtedly proceed from a motive, and be directed to a purpose, not to be decyphered by the mere construction of the thing written. But wherever a writing is arraigned as seditious or slanderous, not upon its ordinary construction in language, nor from the necessary consequences of its publication, under any circumstances and at all times, but that the criminality springs from some extrinsic matter, not visible upon the page itself, nor universally operative, but capable only of being connected with it by evidence, so as to demonstrate the effect of the publication, and the design of the pub-

lisher; such a writing, not libellous *PER SE*, cannot be arraigned as the author's work is arraigned upon the record before the court. I maintain, without the hazard of contradiction, that the law of England positively requires, for the security of the subject, that every charge of a libel complicated with extrinsic facts and circumstances, *debors the writing*, must appear literally upon the record, that the defendant may know what crime he is called upon to answer, and how to stand upon his defence. What crime is it that the defendant comes to answer for to-day? what is the notice that I, who am his counsel, have from this parchment of the crime alleged against him? I come to defend his having written this book. The record states nothing else: the charge of sedition in the introduction is notoriously paper and pack-thread, and the innuendoes cannot enlarge the sense, or natural construction of the text. The record does not state any one extrinsic fact or circumstance, to render the work criminal, at one time more than another; it states no peculiarity of time, or season, or intention, not proveable from the writing itself, which is the naked charge upon record. There is nothing therefore which, upon any principle of English law, gives you any jurisdiction beyond the construction of the *work itself*; and you cannot be justified in finding it criminal because published at this time, unless it would have been a criminal publication under any circumstances, or at any other time.

The law of England then, both in its forms and substance, being the only rule by which the author or the work can be justified or condemned, and the charge upon the record being the naked charge of a libel, the cause resolves itself into a question of the deepest importance to us all, *the nature and extent of the liberty of the English Press*.

But before I enter upon it, I wish to fulfil a duty to the defendant, which, if I do not deceive myself, is at this moment peculiarly necessary to his impartial trial. If an advocate entertains sentiments injurious to the defence he is engaged in, he is not only justified, but bound in duty, to conceal them; so, on the other hand, if his own genuine sentiments, or any thing connected

with his character or situation, can add strength to his professional assistance, he is bound to throw them into the scale : in addressing myself, therefore, to gentlemen not only zealous for the honour of English government, but visibly indignant at any attack upon its principles, and who would, perhaps, be impatient of arguments from a suspected quarter, I give my client the benefit of declaring, that I am, and ever have been, attached to the genuine principles of the British government ;— and that, however the court or you may reject the application, I defend him upon principles not only consistent with its permanence and security, but, without the establishment of which, it never could have had an existence.

The proposition which I mean to maintain as the basis of the liberty of the press, and without which it is an empty sound, is this :

That every man, not intending to mislead and to confound, but seeking to enlighten others with what his own reason and conscience, however erroneously, dictate to him as truth, may address himself to the universal reason of a whole nation, either upon the subject of governments in general, or upon that of our own particular country : that he may analyze the principles of its constitution, point out its errors and defects, examine and publish its corruptions, warn his fellow-citizens against their ruinous consequences, and exert his whole faculties in pointing out the most advantageous changes in establishments which he considers to be radically defective, or sliding from their object by abuse. All this every subject of this country has a right to do, if he contemplates only what he thinks its happiness, and but seeks to change the public mind by the conviction which flows from reasonings dictated by conscience.

If, indeed, he writes what he does not think ; if, contemplating the misery of others, he wickedly condemns what his own understanding approves ; or, even admitting his real disgust against the government or its corruptions, if he calumniates *living magistrates*, or holds out to individuals, that they have a right to run before the public mind in their conduct ; that they may

oppose by contumacy or force what private reason only disapproves; that they may disobey the law, because their judgment condemns it; or resist the public will, because they honestly wish to change it: he is then a criminal upon every principle of rational policy, as well as upon the immemorial precedents of English justice; because such a person seeks to disunite individuals from their duty to the whole, and excites to overt acts of misconduct in a part of the community, instead of endeavouring to change, by the impulse of reason, that universal assent which, in this and in every country, constitutes the law for all.

I have therefore no difficulty in admitting that, if, upon an attentive perusal of this work, it shall be found that the defendant has promulgated any doctrines which tend to withdraw individuals from their subjection to the law by which the whole nation consents to be governed; nay, if the direct contrary shall not be found to be studiously inculcated—if his book shall be found to have warranted or excited that unfortunate criminal who appeared here yesterday to endeavour to relieve himself from imprisonment, by the destruction of a prison, while the law of imprisonment remained, or dictated to him the language of defiance which ran through his whole defence—if, throughout the whole work there shall be found any syllable or letter, which strikes at the security of property, or which hints that any thing less than the whole nation can constitute the law, or that the law, be it what it may, is not the inexorable rule of action for every individual, I willingly yield him up to the justice of the court.

Gentlemen, I say, in the name of Thomas Paine, and in his words as author of the Rights of Man, as written in the very volume that is charged with seeking the destruction of property,

“ The end of all political associations is, the preservation of the rights of man, which rights are liberty, property, and security; that the nation is the source of all sovereignty derived from it: the right of property being secured and inviolable, no one ought to be deprived of it, except in cases of evident public

"necessity, legally ascertained, and on condition of a
"previous just indemnity."

These are undoubtedly the rights of man—the rights for which all governments are established—and the only rights Mr. Paine contends for; but which he thinks (no matter whether right or wrong,) are better to be secured by a republican constitution than by the forms of the English government. He instructs me to admit that, when government is once constituted, no individuals, without rebellion, can withdraw their obedience from it—that all attempts to excite them to it are highly criminal, for the most obvious reasons of policy and justice—that nothing short of the will of a whole people can change or affect the rule by which a nation is to be governed—and that no private opinion, however honestly inimical to the forms or substance of the law, can justify resistance to its authority, while it remains in force. The author of the Rights of Man not only admits the truth of all this doctrine, but he consents to be convicted, and I also consent for him, unless his work shall be found studiously and painfully to inculcate these great principles of government which it is charged to have been written to destroy. Let me not, therefore, be suspected to be contending, that it is lawful to write a book pointing out defects in the English government, and exciting individuals to destroy its sanctions, and to refuse obedience. But, on the other hand, I do contend, that it is lawful to address the English nation on these momentous subjects, for had it not been for this unalienable right, (thanks be to God and our fathers for establishing it,) how should we have had this constitution which we so loudly boast of? If, in the march of the human mind, no man could have gone before the establishments of the time he lived in, how could our establishment, by reiterated changes, have become what it is? If no man could have awakened the public mind to errors and abuses in our government, how could it have passed on from stage to stage, through reformation and revolution, so as to have arrived from barbarism to such a pitch of happiness and perfection that the Attorney General considers it as

profanation to touch it any further, or to look for any future amendment.

In this manner power has reasoned in every age ; government, in *its own estimation*, has been at all times a system of perfection ; but a free press has examined and detected its errors, and the people have happily reformed them : this freedom has alone made our government what it is, and alone can preserve it ; and therefore, under the banners of that freedom, to-day I stand up to defend Thomas Paine. But how, alas ! shall this task be accomplished ? How may I expect from you what human nature has not made man for the performance of ? How am I to address your reasons, or ask them to pause, amidst the torrent of prejudice which has hurried away the public mind on the subject you are to judge ?

Was any Englishman ever so brought as a criminal before an English court of justice ? If I were to ask you, gentlemen of the jury, what is the choicest fruit that grows upon the tree of English liberty, you would answer, *security under the law*. If I were to ask the whole people of England, the return they looked for at the hands of government, for the burthens under which they bend to support it, I should still be answered, *security under the law* ; or, in other words, an impartial administration of justice. So sacred, therefore, has the freedom of trial been ever held in England ; so anxiously does justice guard against every possible bias in her path, that if the public mind has been locally agitated upon any subject in judgment, the form is either changed, or the trial postponed. The circulation of any paper that brings, or which can be supposed to bring, prejudice, or even well-founded knowledge, within the reach of a British tribunal, on the spur of an occasion, is not only highly criminal, but defeats itself, by leading to put off the trial which its object was to pervert. On this principle, his Lordship will permit me to remind him, that on the trial of the Dean of St. Asaph for a libel, or rather when he was brought to trial, the circulation of books by a society favourable to his defence, was held by the Noble Lord, as Chief Justice of Chester, to be a reason for not trying the

cause; although they contained no matter relative to the Dean, nor to the object of his trial; being only extracts from ancient authors of high reputation, on the general rights of juries to consider the innocence as well as the guilt of the accused, yet still, as the recollection of these rights was pressed forward with a view to affect the proceedings, to guard the principle the proceedings were postponed.

Is the defendant then to be the only exception to these admirable provisions? Is the English law to judge him, stript of the armour with which its universal justice encircles all others? Shall we, in the very act of judging him for detracting from the English government, furnish him with ample matter for just reprobation, instead of detraction? Has not his cause been prejudged through a thousand channels? Has not the work before you been daily publicly reviled, and his person held up to derision and reproach? Has not the public mind been excited, by crying down the very phrase and idea of the Rights of Man? Nay, have not associations of gentlemen, I speak it with regret, because I am persuaded, from what I know of some of them, that they, amongst them at least, thought they were serving the public; yet have they not, in utter contempt and ignorance of that constitution of which they declare themselves to be the guardians, published the grossest attacks upon the defendant? Have they not, even while the cause has been standing here in the paper for immediate trial, published a direct protest against the very work now before you, advertising in the same paper, though under the general description of seditious papers, a reward on the conviction of any person who should dare to sell the book itself, to which their own publication was an answer? The Attorney General has spoken of a forced circulation of this work; but how have these prejudging papers been circulated? We all know how: they have been thrown into our carriages in every street; they have met us at every turnpike; and they lie in the areas of all our houses. To complete the triumph of prejudice, that high tribunal, of which I have the honour to be a member, (my learned friends know what I say to be

true) has been drawn into this vortex of slander; and some of its members, for I do not speak of the House itself, have thrown the weight of their stations into the same scale.

By all means I maintain that this cause has been prejudged.

It may be said, that I have made no motion to put off the trial for these causes, and that courts of themselves take no cognizance of what passes elsewhere, without facts laid before them. Gentlemen, I know that I should have had equal justice from that quarter, if I had brought myself within the rule. But when should I have been better in the present aspect of things? And therefore I only remind you of all these hardships, that you may recollect that your judgment is to proceed upon that alone which meets you here, upon the evidence in the cause, and not upon suggestions destructive of every principle of justice.

Having disposed of these foreign prejudices, I hope you will as little regard some arguments that have been offered to you in court. The letter which has been so repeatedly pressed upon you, ought to dismiss even from your recollection; I have already put it out of the question, as having been written long subsequent to the book, and as being a libel on the King, which no part of the information charges, and which may hereafter be prosecuted as a distinct offence. I consider that letter besides, and indeed have always heard it treated, as a forgery, contrived to injure the merits of the cause, and to embarrass me personally in its defence.—I have a right so to consider it, because it is unsupported by any thing similar at an earlier period. The defendant's whole deportment, previous to the publication, has been wholly unexceptionable: he properly desired to be given up as the author of the book, if any inquiry should take place concerning it; and he is not affected in evidence, directly or indirectly, with any illegal or suspicious conduct; not even with having uttered an indiscreet or taunting expression, nor with any one matter or thing, inconsistent with the duty of the best subject in England. His opinions indeed were ad-

verse to our system ; but I maintain that *opinion* is free, and that *conduct* alone is amenable to the law.

You are next desired to judge of the author's mind and intention, by the modes and extent of the circulation of his work. The first part of the Rights of Man, Mr. Attorney General tells you, he did not prosecute, although it was in circulation through the country for a year and a half together, because it seems it circulated only amongst what he styles the judicious part of the public, who possessed in their capacities and experience an antidote to the poison ; but that with regard to the second part now before you, its circulation had been forced into every corner of society ; had been printed and reprinted for cheapness even upon whited brown paper, and had crept into the very nurseries of children, as a wrapper for their sweetmeats.

In answer to this statement, which after all stands only upon Mr. Attorney General's own assertion, unsupported by any kind of proof, (no witness having proved the author's personal interference with the sale,) I still maintain, that if he had the most anxiously promoted it, the question would remain exactly the same : the question would still be, Whether at the time when Paine composed his work, and promoted the most extensive purchase of it, he believed or disbelieved what he had written, and whether he contemplated the happiness or the misery of the English nation, to which it is addressed ; and whichever of these intentions may be evidenced to your judgments upon reading the book itself ? I confess I am utterly at a loss to comprehend how a writer can be supposed to mean something different from what he has written, by an anxiety (common I believe to all authors,) that his work should be generally read.

Remember, I am not asking your opinions of the *doctrines themselves*, you have given them already pretty visibly since I began to address you ; but I shall appeal not only to you, but to those who, without our leave, will hereafter judge without appeal of all that we are doing to-day ; Whether, upon the matter which I hasten to lay before you, you can refuse in justice to pronounce, that, from his education—from the acci-

dents and habits of his life—from the time and occasion of the publication—from the circumstances attending it—and from every line and letter of the work itself, and all his other writings, before and *even since*, his conscience and understanding (no matter whether erroneously or not,) were deeply and solemnly impressed with the matters contained in his book,—that he addressed it to the reason of the nation at large, and not to the passions of individuals, and that in the issue of its influence, he contemplated only what appeared to *him*, (*though it may not to us*,) to be the interest and happiness of England, and of the whole human race? In drawing the one or the other of these conclusions, the book stands first in order, and it ~~shall~~ now speak for itself.

Gentlemen, the whole of it is in evidence before you; the particular parts arraigned having only been read by my consent, upon the presumption that, on retiring from the court, you would carefully compare them with the context, and all the parts with the whole viewed together. You cannot indeed do justice without it. The most common letter, even in the ordinary course of business, cannot be read in a cause to prove an obligation for twenty shillings without the whole being read, that the writer's meaning may be seen without deception. But in a criminal charge of only four pages and a half, out of a work containing nearly two hundred, you cannot, with even the appearance of common justice, pronounce a judgment without the most deliberate and cautious comparison. I observe that the noble and learned judge confirms me in this observation. But if any given part of a work be legally explanatory of every other part of it, the preface, *a fortiori*, is the most material; because the preface is the author's own key to his writing: it is there that he takes the reader by the hand, and introduces him to his subject: it is there that the spirit and intention of the whole is laid before him by way of prologue. A preface is meant by the author as a clue to ignorant or careless readers: the author says by it, to every man who chuses to begin where he ought, Look at my plan

—attend to my distinctions—mark the purpose and limitations of the matter I lay before you.

Let then the calumniators of Thomas Paine now attend to his preface, where, to leave no excuse for ignorance or misrepresentation, he expresses himself thus :

“ I have differed from some professional gentlemen
“ on the subject of prosecutions, and I since find they
“ are falling into my opinion, which I will here state
“ as fully, but as concisely as I can.

“ I will first put a case with respect to any law, and
“ then compare it with a government, or with what in
“ England is, or has been, called a constitution.

“ It would be an act of despotism, or what in Eng-
“ land is called arbitrary power, to make a law to pro-
“ hibit investigating the principles, good or bad, on
“ which such a law, or any other, is founded.

“ If a law be bad, it is one thing to oppose the prac-
“ tice of it, but it is quite a different thing to expose
“ its errors, to reason on its defects, and to shew cause
“ why it should be repealed, or why another ought to
“ to be substituted in its place. I have always held it
“ an opinion (making it also my practice) that it is bet-
“ ter to obey a bad law, making use at the same time
“ of every argument to shew its errors and procure its
“ repeal, than forcibly to violate it ;—because the pre-
“ cedent of breaking a bad law might weaken the force
“ and lead to a discretionary violation, of those which
“ are good.

“ The case is the same with principles and forms of
“ government, or to what are called constitutions and
“ the parts of which they are composed.

“ It is for the good of nations, and not for the emo-
“ lument or aggrandisement of particular individuals,
“ that government ought to be established, and that
“ mankind are at the expence of supporting it. The
“ defects of every government and constitution,
“ both as to principle and form, must, on a parity of
“ reasoning, be as open to discussion as the defects of a
“ a law, and it is a duty which every man owes to so-
“ ciety to point them out. When those defects, and the
“ means of remedying them are generally seen by a na-
“ tion, that nation will reform its government or its

“ constitution in the one case, as the government repealed or reformed the law in the other.”

Gentlemen, you must undoubtedly wish to deal with every man who comes before you in judgment, as you would be dealt by yourselves; and surely you will not lay it down to-day as a law to be binding hereafter even upon yourselves, that if you should publish any opinion concerning the existing abuses in your country's government, and point out to the whole public the means of amendment, you are to be acquitted or convicted as any twelve men may happen to agree with you in your opinions. Yet this is precisely what you are asked to do to another: it is precisely the case before you. Mr. Paine expressly says, I obey a law until it is repealed; obedience is not only my principle, but my practice, since my disobedience of a law from thinking it bad, might apply to justify another man in the disobedience of a good one; and thus individuals would give the rule for themselves, and not society for all.

Gentlemen, you will presently see that the same principle pervades the rest of the work; and I am the more anxious to call your attention to it, however repetition may tire you, because it unfolds the whole principles of my argument: for, if you find a sentence in the whole book that invests any individual, or any number of individuals, or any community short of the whole nation, with a power of changing any part of the law or constitution, I abandon the cause—yes, I freely abandon it, because I will not affront the majesty of a court of justice by maintaining propositions which, even upon the surface of them, are false. Mr. Paine, page 162—168, goes on thus:

“ When a nation changes its opinion and habits of thinking, it is no longer to be governed as before; but it would not only be wrong, but bad policy, to attempt by force what ought to be accomplished by reason. Rebellion consists in forcibly opposing the general will of a nation, whether by a party or by a government. There ought, therefore, to be, in every nation, a method of occasionally ascertaining the state of public opinion with respect to government.

“ There is, therefore, no power but the voluntary

" will of the people that has a right to act in any mat-
 " ter respecting a general reform; and by the same
 " right that two persons can confer on such a subject,
 " a thousand may. The object in all such preliminary
 " proceedings is, to find out what the general sense of
 " a nation is, and to be governed by it. If it prefer a
 " bad or defective government to a reform, or chuse to
 " pay ten times more taxes than there is occasion for,
 " it has a right so to do; and, so long as the majority
 " do not impose conditions on the minority different to
 " what they impose on themselves, though there may
 " be much error, there is no injustice; neither will the
 " error continue long. Reason and discussion will soon
 " bring things right, however wrong they may begin.
 " By such a process no tumult is to be apprehended.
 " The poor, in all countries, are naturally both peace-
 " able and grateful in all reforms in which their inter-
 " est and happiness are included. It is only by ne-
 " glecting and rejecting them that they become tumult-
 " tuous."

Gentlemen, these are the sentiments of the author of
 the Rights of Man; and, whatever his opinions may
 be of the defects in our government, it never can change
 our sentiments concerning it, if our sentiments are just;
 and a writing can never be seditious in the sense of the
 English law, which states that the government leans
 on the universal will for its support.

Gentlemen, this universal will is the best and secu-
 rest title which his Majesty and his family have to the
 throne of these kingdoms; and in proportion to the
 wisdom of our institutions, the title must in common
 sense become the stronger: so little idea, indeed, have
 I of any other, that in my place in parliament, not a
 week ago, I considered it as the best way of expressing
 my attachment to the constitution, as established at the
 Revolution, to declare (I believe in the presence of the
 heir apparent of the crown, for whom I have the great-
 est personal zeal) that his Majesty reigned in England,
 by choice and consent, as the magistrate of the English
 people; not indeed a consent and choice by personal
 election, like a king of Poland, the worst of all possible
 constitutions; but by the election of a family for great

national objects, in defiance of that hereditary right, which only becomes tyranny, in the sense of Mr. Paine, when it claims to inherit a nation, instead of governing by their consent, and continuing for its benefit.

Gentlemen, this sentiment has the advantage of Mr. Burke's high authority, who says with great truth, in a letter to his constituents, "Too little dependence cannot be had at this time of day on names and prejudices: the eyes of mankind are opened: and communities must be held together by a visible and solid interest." I believe, Gentlemen of the Jury, that the Prince of Wales will always render this title dear to the people. The Attorney General can only tell you what he believes of him; I can tell you what I know, and what I am bound to declare, since this Prince may be traduced and calumniated in every part of the kingdom, without its coming often in question, till brought in to load a defence with matter collateral to the charge. I therefore assert what the Attorney General can only hope, that, whenever that Prince shall come to the throne of this country (which I hope, but by the course of nature, will never happen), he will make the constitution of Great Britain the foundation of all his conduct.

Having now, Gentlemen, established the author's general intention by his own introduction, which is the best and fairest exposition, let us next look at the occasion which gave it birth.

The Attorney General, throughout the whole course of his address to you (I knew it would be so) has avoided the most distant notice or hint of any circumstance having led to the appearance of the author in the political world, after a silence of so many years; he has not even pronounced, or even glanced at the name of Mr. Burke, but has left you to take it for granted that the defendant volunteered this delicate and momentous subject; and that, without being led to it by the provocation of political controversy, he had seized a favourable moment to stigmatize, from mere malice, and against his own confirmed opinions, the Constitution of this Country.

Gentlemen, my learned friend knows too well my respect and value for him to suppose that I am charging him with a wilful suppression; I know him to be incapable of it; he knew it would come from me. He will permit me, however, to lament that it should have been left for me, at this late period of the cause, to inform you, that, not only the work before you, but the First Part, of which it is a natural continuation, were written *avowedly, and upon the face of them*, IN ANSWER TO MR. BURKE. They were written besides under circumstances which I shall hereafter explain, and in the course of which explanation I may have occasion to cite a few passages from the works of that celebrated person. And I shall speak of him with the highest respect: for, with whatever contempt he may delight to look down upon my humble talents, however he may disparage the principles which direct my public conduct, he shall never force me to forget the regard which this country owes to him for the writings which he has left upon record for the illumination of our most distant posterity. After the gratitude which we owe to God for the divine gifts of reason and understanding, our next thanks are due to those from the fountain of whose enlightened minds they are fed and fructified. But pleading, as I do, the cause of freedom of opinions, I shall not give offence by remarking that this great author has been thought to have changed some of his; and, if Thomas Paine had not thought so, I should not now be addressing you, because the book which is my subject would never have been written. Who is right and who is wrong, in the contention of doctrines, I have repeatedly disclaimed to be the question; I can only say that Mr. Paine may be right throughout, but that Mr. Burke cannot—Mr. Paine has been uniform in his opinions, but Mr. Burke has not—Mr. Burke can only be right in part; but, should Mr. Paine be even mistaken in the whole, still I am not removed from the principle of his defence. My defence has nothing to do with either the concealment or rectitude of his doctrines. I admit Mr. Paine to be a republican; you shall soon see what made him one—I do not seek to shade or qualify his attack upon our constitution; I put my defence on

no such matter; he undoubtedly means to declare it to be defective in its forms, and contaminated with abuses, which, in his judgment, will one day or other bring on the ruin of us all: it is in vain to mince the matter; this is the scope of his work. But still, if it contains no attack upon the King's Majesty, nor upon any other living magistrate; if it excites to no resistance to magistracy, but, on the contrary, if it even inculcates, as it does, obedience to government, then, whatever may be its defects, the question continues as before, and ever must remain an unmixed question of the liberty of the press. I therefore considered it as no breach of professional duty, nor injurious to the cause I am defending, to express my own admiration of the real principles of our constitution; a constitution which I hope never to see give way to any other; a constitution which has been productive of various benefits, and which will produce many more hereafter, if we have wisdom enough to pluck up those weeds that grow in the richest soils, and amongst the brightest flowers. I agree with the merchants of London, that the English government is equal to the reformation of its own abuses; and, as an inhabitant of the city, I would have signed their Declaration, if I had known, *of my own knowledge*, the facts recited in its preamble. But abuses the English constitution unquestionably has, which call loudly for reformation, the existence of which has been the theme of our greatest statesmen, which have too plainly formed the principles of the defendant, and created the very conjuncture which produced his book.

Gentlemen, we all but too well remember the calamitous situation in which our country stood but a few years ago; a situation which no man can look back upon without horror, nor feel himself safe from relapsing into again, while the causes remain which produced it. The event I allude to, you must know to be the American war, and the still existing causes of it, the corruptions of this government. In those days it was not thought virtue by the patriots of England to conceal their existence from the people; but then, as now, authority condemned them as disaffected subjects, and defeated the ends they fought by their promulgation.

Hear the opinion of Sir George Saville; not his speculative opinion concerning the structure of our government in the abstract, but his opinion of the settled abuses which prevailed in his own time, and which continue at this moment. But first let me remind you who Sir George Saville was—I fear we shall hardly look upon his like again—How shall I describe him to you?—In my own words I cannot. I was lately commended by Mr. Burke, in the House of Commons, for strengthening my own language by an appeal to Dr. Johnson. Were the honourable gentleman present at this moment, he would no doubt doubly applaud my choice in resorting to his own works for the description of Sir George Saville :

“ His fortune is among the largest; a fortune, which, wholly unincumbered as it is, without one single charge from luxury, vanity, or excess, sinks under the benevolence of its dispenser. This private benevolence, expanding itself into patriotism, renders his whole being the estate of the public, in which he has not reserved a *peculium* for himself of profit, diversion, or relaxation. During the session, the first in, and the last out of the House of Commons; he passes from the senate to the camp; and, seldom seeing the seat of his ancestors, he is always in Parliament to serve his country, or in the field to defend it.”

It is impossible to ascribe to such a character any principle but patriotism, when he expressed himself as follows :

“ I return to you baffled and dispirited, and I am sorry that truth obliges me to add, with hardly a ray of hope of seeing any change in the miserable course of public calamities.

“ On this melancholy day of account, in rendering up to you my trust, I deliver to you your share of a country maimed and weakened; its treasures lavished and mispent; its honours faded; and its conduct the laughing-stock of Europe: our nation in a manner

“ without allies or friends, except such as we have
 “ hired to destroy our fellow-subjects, and to ravage a
 “ country, in which we once claimed an invaluable
 “ share. I return to you some of your principal privi-
 “ leges impeached and mangled. And, lastly, I leave
 “ you, as I conceive, at this hour and moment fully,
 “ effectually, and absolutely, under the discretion and
 “ power of a military force, which is to act without
 “ waiting for the authority of the civil magistrates.

“ Some have been accused of exaggerating the pub-
 “ lic misfortunes, nay, of having endeavoured to help
 “ forward the mischief, that they might afterwards raise
 “ discontents. I am willing to hope, that neither my
 “ temper, nor my situation of life, will be thought na-
 “ turally to urge me to promote misery, discord, or
 “ confusion, or to exult in the subversion of order, or
 “ in the ruin of property. I have no reason to con-
 “ template with pleasure the poverty of our country,
 “ the increase of our debts, and of our taxes; or the
 “ decay of our commerce. Trust not, however to my
 “ report: reflect, compare, and judge for yourselves.

“ But, under all these disheartening circumstances, I
 “ could yet entertain a cheerful hope, and undertake
 “ again the commission with alacrity, as well as zeal,
 “ if I could see any effectual steps taken to remove the
 “ original cause of the mischief—‘ Then would there
 “ be a hope.’

“ But, till the purity of the constituent body, and
 “ thereby that of the representative, be restored, there
 “ is NONE.

“ I gladly embrace this most public opportunity of
 “ delivering my sentiments, not only to all my consti-
 “ tuents, but to those likewise not my constituents,
 “ whom yet, in the large sense, I represent, and am
 “ faithfully to serve.

“ I look upon restoring election and representation
 “ in some degree (for I expect no miraeles) to their
 “ original purity, to be that, without which all other
 “ efforts will be vain and ridiculous.

“ If something be not done, you may, indeed, retain
 “ the outward form of your constitution, but not the
 “ power thereof.”

Such were the words of that great good man, lost with those of many others of his time, and his fame, as far as power could hurt it, put in the shade along with them. The consequences we have all seen and felt : America, from an obedient affectionate colony, became an independent nation ; and two millions of people, nursed in the very lap of our monarchy, became the willing subjects of a republican constitution.

Gentlemen, in that great and calamitous conflict Mr. Burke and Mr. Paine fought in the same field of reason together, but with very different successes. Mr. Burke spoke to a Parliament in England, such as Sir George Saville describes it, that had no ears but for sounds that flattered its corruptions. Mr. Paine, on the other hand, spoke TO A PEOPLE ; reasoned with them, that they were bound by no subjection to any sovereignty, further than their own benefits connected them ; and by these powerful arguments prepared the minds of the American people for that GLORIOUS, JUST, and HAPPY revolution.

Gentlemen, I have a right to distinguish it by that appellation, because I aver that at this moment there is as sacred a regard to property, as inviolable a security to all the rights of individuals, lower taxes, fewer grievances, less to deplore, and more to admire, in the constitution of America, than that of any other country under heaven. I wish indeed to except our own, but I cannot even do that, till it shall be purged of those abuses, which, though they obscure and deform the surface, have not as yet (thank God) destroyed the vital parts.

Why then is Mr. Paine to be calumniated, and reviled, because out of a people consisting of near three millions, he alone did not remain attached in opinion to a monarchy. Remember, that all the blood which was shed in America, and to which he was for years a melancholy and indignant witness, was shed by the authority of the crown of Great Britain, under the influence of its parliament, such as Sir George Saville has described it, and such as Mr. Burke himself will be called upon by and by, in more glowing colours, to paint it. How then can it be wondered at that Mr. Paine

should return to this country in his heart a republican? Was he not equally republican when he wrote *Common Sense*? yet that volume has been sold without restraint or prosecution in every shop in England ever since, and which nevertheless (*I appeal to the book, which I have in court, and which is in every body's hands*) contains every one principle of government, and every abuse in the British constitution, which is to be found in the *Rights of Man*. Yet Mr. Burke himself saw no reason to be alarmed at its publication, nor to cry down its contents, even when America, which was swayed by it, was in arms against the Crown of Great Britain. You shall hear his opinion of it, in his letter to the sheriffs of Bristol, pages 33 and 34.

"The court gazette accomplished what the abettors of independence had attempted in vain. When that disingenuous compilation, and strange medley of railing and flattery, was adduced, as a proof of the united sentiments of the people of Great Britain, there was a great change throughout all America. The tide of popular affection, which had still set towards the parent country, began immediately to turn, and to flow with great rapidity in a contrary course. Far from concealing these wild declarations of enmity, *the author of the celebrated pamphlet which prepared the minds of the people for independence*, insists largely on the multitude and the spirit of these addresses; and draws an argument from them, which (if the fact were as he supposes) must be irresistible. For I never knew a writer on the theory of government so partial to authority, as not to allow that the hostile mind of the rulers to their people, did fully justify a change of government; nor can any reason whatever be given, why one people should voluntarily yield any degree of pre-eminence to another, but on a supposition of great affection and benevolence towards them. Unfortunately your rulers, trusting to other things, took no notice of this great principle of connexion."

But there is a time, it seems, for all things.

Gentlemen, the consequences of this mighty revolution are too notorious to require illustration. No au-

dience would sit to hear (what every body has seen and felt,) the independence of America notoriously produced, not by remote and circuitous effect, but directly and palpably, the revolutions which now agitate Europe, and which portend such new changes over the face of the earth. Let governors take warning. The revolution in France was the consequence of her incurably corrupt and profligate government. God forbid that I should be thought to lean, by this declaration, upon her unfortunate monarch, bending, perhaps at this moment, under afflictions which my heart sinks within me to think of; but, when I speak with detestation of the former politics of the French court, I fasten as little of them upon that fallen and unhappy prince, as I impute to our gracious sovereign the corruptions of our own government. I desire, indeed, in the distinctest manner, to be understood that I mean to speak of his Majesty, not only with that obedience and duty which I owe to him as a subject, but with that justice which I think is due to him from all men who examine his conduct either in public or private life.

Gentlemen, Mr. Paine happened to be in England when the French revolution took place, and notwithstanding what he must be supposed and allowed from his history to have felt upon such a subject, he remained wholly silent and inactive. The people of this country too appeared to be indifferent spectators of the animating scene. They saw, without visible emotion, despotism destroyed, and the King of France, by his own consent, become the first magistrate of a free people. Certainly, at least, it produced none of those effects which are so deprecated by government at present; nor, most probably, ever would, if it had not occurred to the celebrated person, whose name I must so often mention, voluntarily to provoke the subject; a subject which, if dangerous to be discussed, he should not have led to the discussion: for, surely, it is not to be endured, that any private man is to publish a creed for a whole nation; to tell us that we are not to think for ourselves—to impose his own fetters upon the human mind—to dogmatise at discretion—and that no man shall sit down to answer him without being guilty

of a libel. I assert, that if it be a libel to mistake our constitution—to support it by means that tend to destroy it—and to chuse the most dangerous season for the interference, Mr. Burke is that libeller; but not therefore the object of a criminal prosecution: for, whilst I am defending the motives of one man, I have neither right nor disposition to criminate the motives of another. All I contend for, is a fact that cannot be controverted, viz. that this officious interference was the origin of Mr. Paine's book. I put my cause upon its being the origin of it—the avowed origin—as will abundantly appear from the introduction and preface to both parts, and throughout the whole body of the work; nay, from the very work of Mr. Burke himself, to which both of them are answers.

Gentlemen, for the history of that celebrated work, I appeal to itself.

When the French revolution had arrived at some of its early stages, a few, and but a few, persons (not to be named when compared with the nation) took a visible interest in these mighty events; an interest well worthy of Englishmen. They saw a pernicious system of government, which had led to cruel desolating wars, and had been for ages the scourge of Great Britain, giving way to a system which seemed to promise harmony and peace amongst the nations. They saw this with virtuous and peaceable satisfaction: and a reverend divine*, eminent for his eloquence, recollecting that the issues of life are in the hands of God, saw no profaness in mixing the subject with public thanksgiving; reminding the people of this country of their own glorious deliverance in former ages. It happened, also, that a society of gentlemen, France being then a neutral nation, and her own monarch swearing almost daily upon her altars to maintain the new constitution, thought they infringed no law by sending a general congratulation. Their numbers, indeed, were very inconsiderable; so much so, that Mr. Burke, with more truth than wisdom, begins his volume with a sarcasm upon their insignificance.

* Dr. Price.

"Until very lately he had never heard of such a club: It certainly never occupied a moment of his thoughts; nor, he believed, those of any person out of their own set."

Why then make their proceedings the subject of alarm throughout England? There had been no prosecution against them, nor any charge founded upon suspicion of disaffection against any of their body. But Mr. Burke thought it was reserved for his eloquence to whip these curs of faction to their kennels. How he has succeeded, I appeal to all that has happened since the introduction of his schism in the British empire, by giving to the king, whose title was questioned by no man, a title which it is his Majesty's most solemn interest to disclaim.

After having, in his first work, lashed Dr. Price in a strain of eloquent irony for considering the monarchy to be elective, which he could not but know Dr. Price, in the literal sense of election, neither did or could possibly consider it, Mr. Burke published a second treatise; in which, after reprinting many passages from Mr. Paine's former work, he ridicules and denies the supposed right of the people to change their governments, in the following words:

"The French revolution," say they, (speaking of the English societies,) "was the act of the majority of the people; and if the majority of any other people, *the people of England, for instance*, wish to make the same change, they have the same right; just the same undoubtedly; that is, none at all."

And then, after speaking of the subserviency of will to duty, (in which I agree with him,) he, in a substantive sentence, maintains the same doctrine; thus:

"The constitution of a country being once settled upon some compact, tacit or expressed, there is no power existing of force to alter it, without the breach of the covenant, or the consent of all the parties.—Such is the nature of a contract."

So that if reason, or even revelation itself, were now to demonstrate to us, that our constitution was mischievous in its effects; that, to use Mr. Attorney General's expression, we had been insane for the many centuries we have supported it; yet that still, if the king had not forfeited his title to the crown, nor the lords their privileges, the universal voice of the whole people of England could not build up a new government upon a legitimate basis.

Gentlemen, not to argue for the present against such a proposition, and supposing it could, beyond all controversy, be maintained; for heaven's sake, let wisdom never utter it! Let policy and prudence for ever conceal it! If you seek the stability of the English government, rather put the book of Mr. Paine, which calls it bad, into every hand in the kingdom, than doctrines which bid human nature rebel even against that which is the best. Say to the people of England, Look at your constitution, there it lies before you—the work of your pious fathers, handed down as a sacred deposit from generation to generation, the result of wisdom and virtue, and its parts cemented together with kindred blood. There are, indeed, a few spots upon its surface; but the same principle which reared the structure will brush them all away: you may keep it, or you may destroy it. To such an address what would be the answer? A chorus of the nation—*Yes, we will preserve it.* But say to the same nation, even of the very same constitution, It is yours, such as it is, for better or for worse; it is strapped upon your backs, to carry it as beasts of burthen, and you have no jurisdiction to cast it off. Let this be your position, and you instantly raise up (I appeal to every man's consciousness of his own nature) a spirit of uneasiness and discontent. Yet it is the controversy alone, which this useless and mischievous proposition stirred up, that has pointed most of the passages arraigned before you, which it will be presently my duty to explain.

But let the prudence of the argument be what it may, the argument itself is untenable.

His Majesty undoubtedly was not elected to the throne. No man can be supposed, in the teeth of fact,

to have contended it ; but did not the people of England elect King William, and break the hereditary succession ? and does not his Majesty's title grow out of that election ? It is one of the charges against the defendant, his having denied the Parliament which called the Prince of Orange to the throne to have been a legal convention of the whole people ; and is not the very foundation of that charge, that it was such a legal convention, and that it was intended to be so ? and if it was so, did not the people then confer the crown upon King William without any regard to hereditary right ? Did they not cut off the Prince of Wales, who stood directly in the line of succession, and who had incurred no personal forfeiture ? Did they not give their deliverer an estate in the crown totally new and unprecedented in the law or history of the country ?— And, lastly, might they not, by the same authority, have given the royal inheritance to the family of a stranger ? Mr. Justice Blackstone, in his Commentaries, in terms, asserts that they might ; and ascribes their choice of King William, and the subsequent limitations of the crown, not to want of jurisdiction, but to their true origin, to prudence and discretion in not disturbing a valuable institution further than public safety and necessity dictated.

* The English government stands then on this public consent, the true root of all governments. And I agree with Mr. Burke, that, while it is well administered, it is not in the power of factions or libels to disturb it ; though, when ministers are in fault, they are sure to set down all disturbances to these causes. This is most justly and eloquently exemplified in the Thoughts on the Cause of the present Discontents, pages 5 and 6.

“ Ministers contend that no adequate provocation
 “ has been given for so spreading a discontent, our af-
 “ fairs having been conducted throughout with remark-
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 “ a few disappointed politicians, have, in their opinion,
 “ been able to produce this unnatural ferment in the
 “ nation.

“ Nothing, indeed, can be more unnatural than the
 “ present convulsions of this country, if the above ac-
 “ count be a true one. I confess I shall assent to it
 “ with great reluctance, and only on the compulsion of
 “ the clearest and firmest proofs; because their account
 “ resolves itself into this short but discouraging propo-
 “ sition, ‘ that we have a very good ministry, but that
 “ we are a very bad people;’ that we set ourselves to
 “ bite the hand that feeds us; and, with a malignant
 “ insanity, oppose the measures, and ungratefully vilify
 “ the persons of those whose sole object is our own peace
 “ and prosperity. If a few puny libellers, acting under
 “ a knot of factious politicians, without virtue, parts,
 “ or character (for such they are constantly represented
 “ by these gentlemen,) are sufficient to excite this dis-
 “ turbance, very perverse must be the disposition of that
 “ people, amongst whom such a disturbance can be ex-
 “ cited by such means.”

He says true: never were serious disturbances ex-
 cited by such means!

But to return to the argument. Let us now see how
 the rights of the people stand upon authority, and whe-
 ther this great source of government is not maintained
 by persons on whom my friend will find it hard to fas-
 ten the character of libellers.

I shall begin with the most modern author on the
 subject of government—a gentleman, whose work lies
 spread out before me, as it often does for my delight
 and instruction in my leisure hours. I have also, by
 the favour of a friend who sits near me in court, the
 honour of his personal acquaintance. He is a man,
 perhaps more than any other, devoted to the real con-
 stitution of the country, as will be found throughout
 his valuable work; and he is a person, besides, of great
 learning, which enabled him to infuse much useful
 knowledge into my learned friend who introduced me
 to him*. I speak of Mr. Paley, Archdeacon of Car-
 lisle, and of his work, intitled, *The Principles of Poli-
 tical and Moral Philosophy*, in which he investigates
 the first principles of all governments—a discussion not

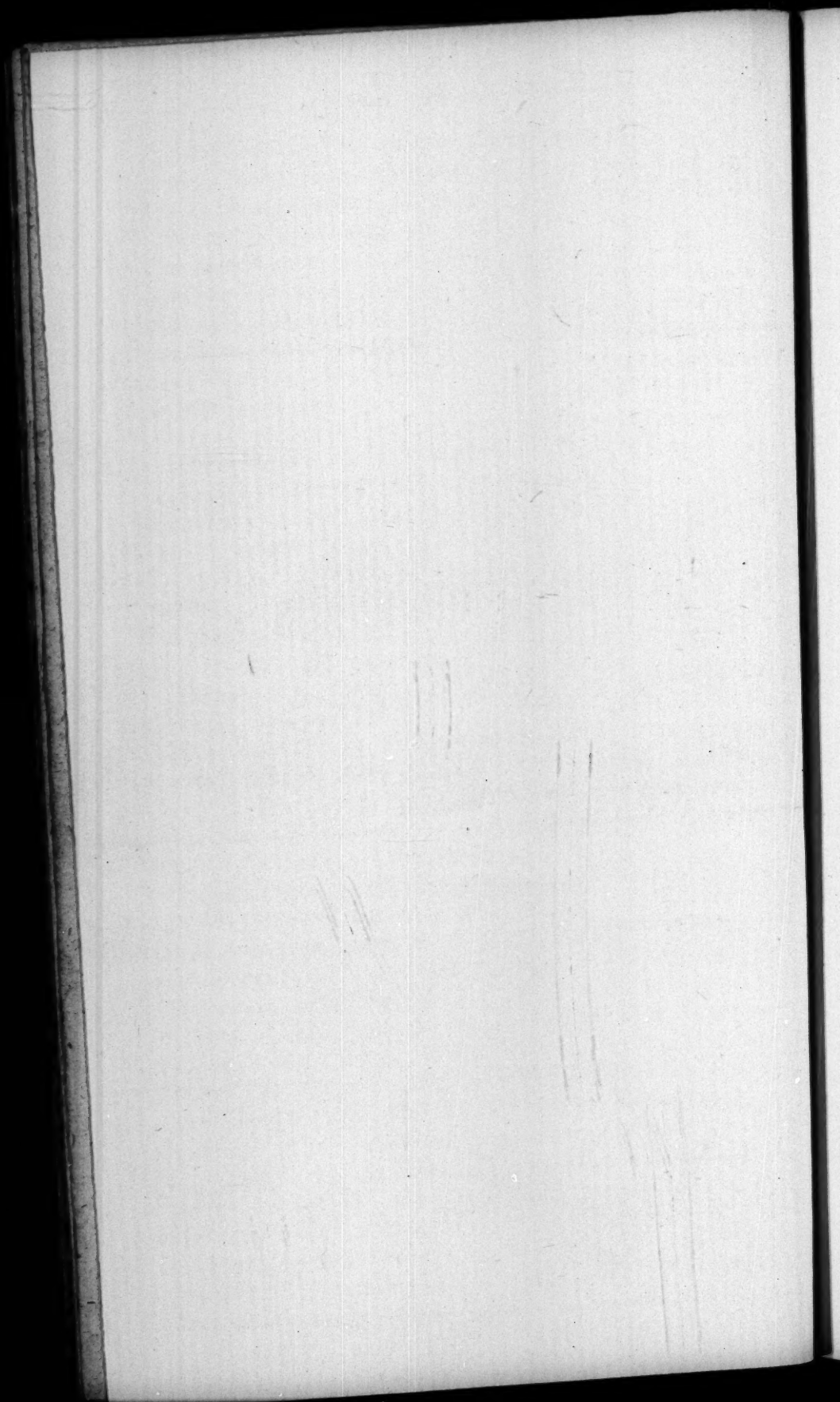
* Mr. Law, King's counsel.

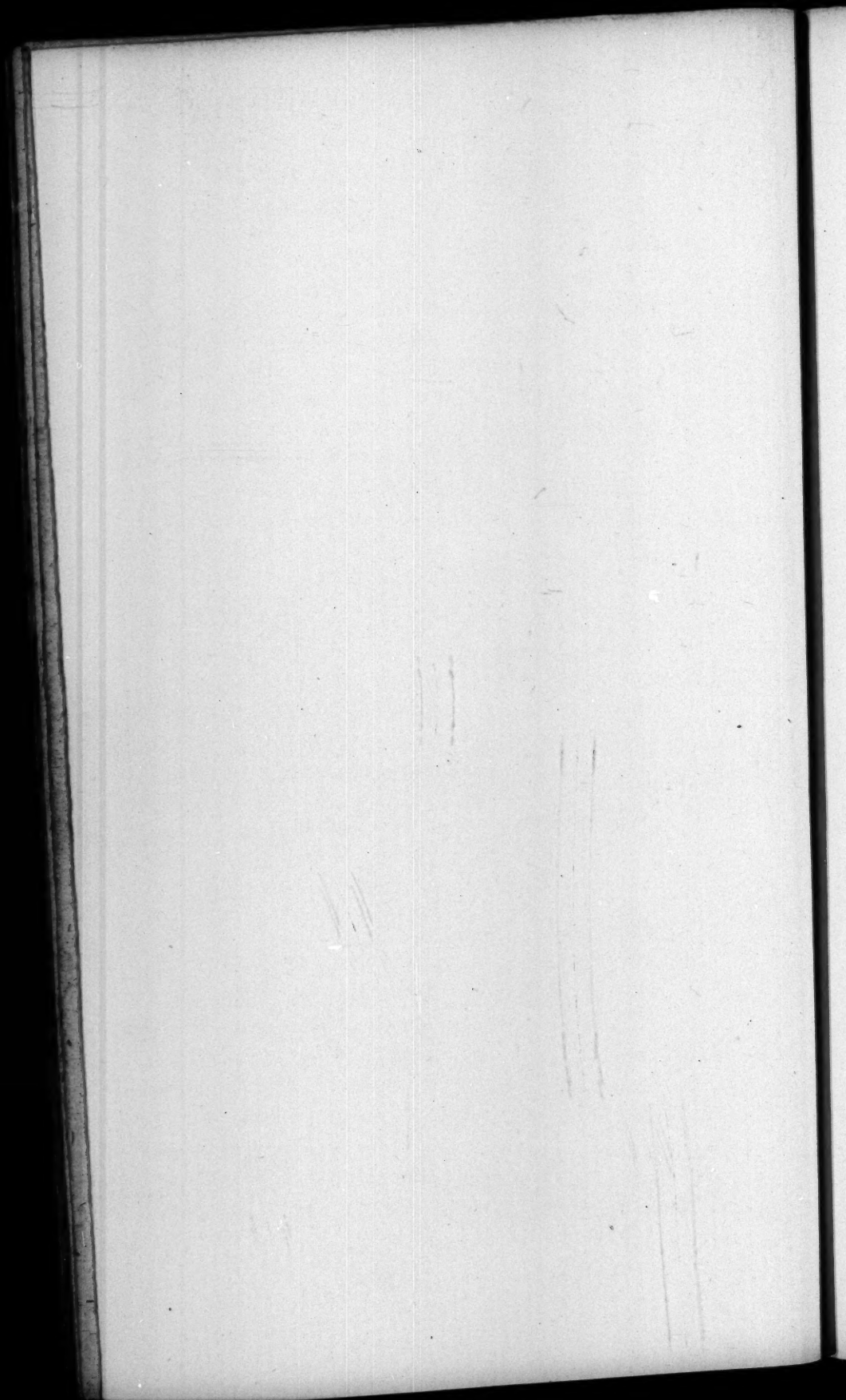
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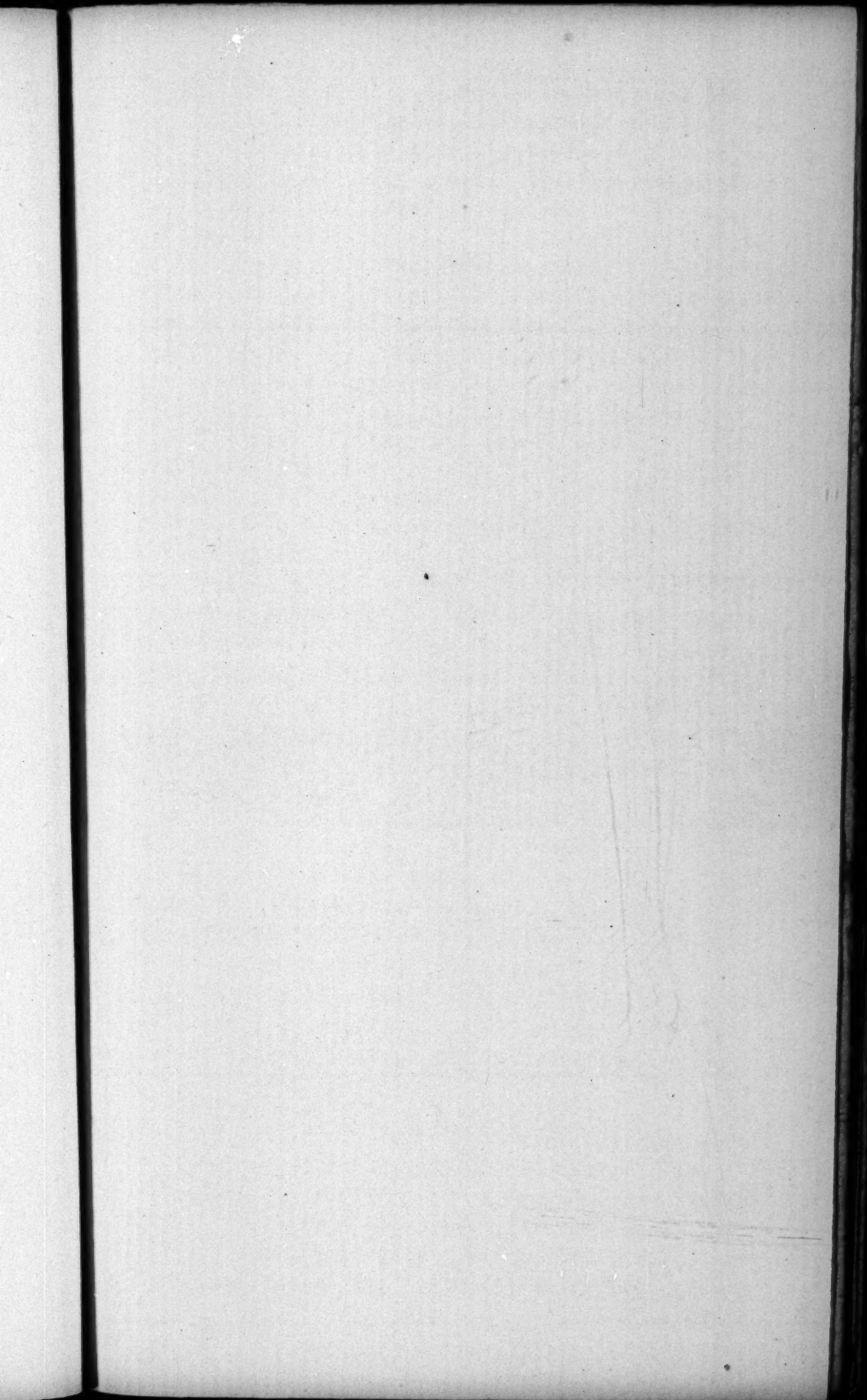
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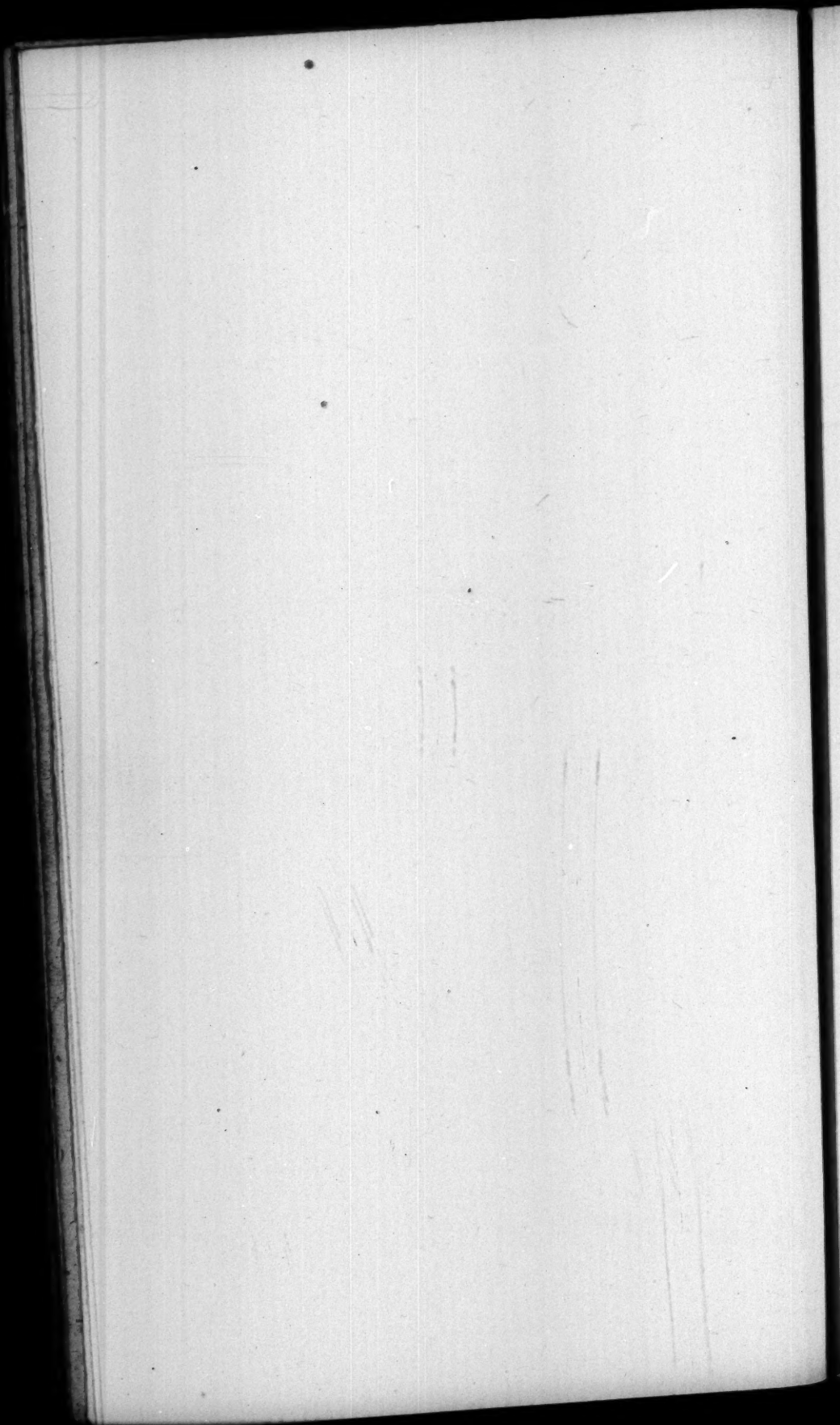
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ces under the King ; I speak of the Earl of Chesterfield, who thus expressed himself in the House of Lords :—
 “ One of the greatest blessings, my Lords, we enjoy,
 “ is Liberty ; but every good in this life has its alloy
 “ of evil—Licentiousness is the alloy of Liberty, it
 “ is ———.”

Lord Kenyon. Doctor Johnson claims to pluck that feather from Lord Chesterfield’s wing ; he speaks, I believe, of the eye of the political body.

Mr. Erskine. Gentlemen, I have heard it said, that Lord Chesterfield borrowed that which I was just about to state, and which his Lordship has anticipated.

Lord Kenyon. That very speech which did Lord^s Chesterfield so much honour, is supposed to have been written by Doctor Johnson.

Mr. Erskine. Gentlemen, I believe it was so, and I am much obliged to his Lordship for giving me a far higher authority for my doctrine. For though Lord Chesterfield was a man of great ingenuity and wit, he was undoubtedly far inferior in learning and in monarchical opinion, to the celebrated writer to whom my Lord has now delivered the work by his authority. Doctor Johnson then says, “ One of the greatest blessings we enjoy, one of the greatest blessings a people, my Lords, can enjoy, is Liberty ; but every good in this life has its alloy of evil : licentiousness is the alloy of Liberty : it is an ebullition, an excrescence ; it is a speck upon the eye of the political body, which I can never touch but with a gentle, with a trembling hand, lest I destroy the body, lest I injure the eye upon which it is apt to appear.

“ There is such a connection between licentiousness and liberty, that it is not easy to correct the one without dangerously wounding the other ; it is extremely hard to distinguish the true limit between them ; like a changeable silk, we can easily see there are two different colours, but we cannot easily discover where the one ends, or where the other begins.”

I confess, I cannot help agreeing with this learned author. The danger of touching the press is the difficulty of marking its limits. My learned friend, who has just gone out of Court, has drawn no line, and un-

folded no principle. He has not told us, if this book is condemned, what book may be written. If I may not write against the existence of a monarchy, and recommend a republic, may I write against any part of the Government? May I say that we should be better without a House of Lords, or a House of Commons, or a Court of Chancery, or any other given part of our establishment? Or if, as has been hinted, a work may become libellous for stating even legal matter with sarcastic phrase, the difficulty becomes the greater, and the liberty of the press more impossible to define.

The same author, pursuing the subject and speaking of the fall of Roman liberty, says, " But this sort of liberty came soon after to be called licentiousness; for we are told that Augustus, after having established his empire, restored order in Rome by restraining licentiousness. God forbid we should in this country have order restored, or licentiousness restrained, at so dear a rate as the People of Rome paid for it to Augustus.

" Let us consider, my Lords, that arbitrary power has seldom or never been introduced into any country at once. It must be introduced by slow degrees, and as it were step by step, lest the people should see its approach. The barriers and fences of the people's liberty must be plucked up one by one, and some plausible pretences must be found for removing or hood-winking, one after another, those sentries who are posted by the constitution of a free country, for warning the people of their danger. When these preparatory steps are once made, the people then, indeed, with regret, see slavery and arbitrary power making long strides over their land; but it will be too late to think of preventing or avoiding the impending ruin.

" The stage, my Lords, and the press, are two of our out-sentries; if we remove them, if we hood-wink them, if we throw them in fetters, the enemy may surprise us."

Gentlemen, this subject was still more lately put in the justest and most forcible light by a noble person high in the Magistracy; and whose mind is not at all tuned

to the introduction of disorder by improper popular excesses; I mean Lord Loughborough, Chief Justice of the Court of Common Pleas. I believe I can answer for the correctness of my note, which I shall follow up with the opinion of another member of the Lord's House of Parliament; the present Earl Stanhope; or rather, I shall take Lord Stanhope first, as his Lordship introduces the subject by adverting to this argument of Lord Loughborough's. "If," says his Lordship, "our boasted liberty of the press, were to consist only in the liberty to write in praise of the Constitution, this is a liberty enjoyed under many arbitrary governments. I suppose it would not be deemed quite an unpardonable offence, even by the Empress of Russia, if any man were to take into his head to write a panegyric upon the Russian form of Government. Such a liberty as that might therefore properly be termed the *Russian Liberty of the Press*. But, the *English Liberty of the Press* is of a very different description: for, by the law of England, it is not prohibited to publish speculative works upon the Constitution, whether they contain praise or censure."—Lord Stanhope's defence of the *Libel Bill*.

You see therefore, as far as the general principles go, I am supported by the opinion of Lord Stanhope, for otherwise the noble Lord has written a libel himself, by exciting other people to write *whatever they may think*, be it good or evil, of the constitution of the country. As to the other high authority, Lord Loughborough, I will read what applies to this subject—'Every man' said Lord Loughborough, "may publish at his discretion his opinions concerning forms and systems of Government."

'If they be wise and enlightening, the world will gain by them; if they be weak and absurd, they will be laughed at and forgotten; and, if they be *bona fide*, they cannot be criminal, however erroneous. On the other hand, the purpose and the direction may give a different turn to writings whose common construction is harmless or even meritorious. Suppose men, assembled in disturbance of the peace, to pull down mills or turnpikes, or to do any other mischief,

‘ and that a mischievous person should disperse among
 ‘ them an excitation to the planned mischief known to
 ‘ both writer and reader, *To your tents, O Israel*; that
 ‘ publication would be criminal. But how criminal?
 ‘ not as a libel, not as an abstract writing, but as an
 ‘ act; and the act being the crime *it must be stated as a*
 ‘ *fact extrinsic on the record*: for, otherwise, a Court
 ‘ of Error could have no jurisdiction but over the natu-
 ‘ ral construction of the writing; nor would the defen-
 ‘ dant have any notice of such matter at the trial, with-
 ‘ out a charge on the Record. To give the Jury cog-
 ‘ nizance of any matter beyond the construction of the
 ‘ writing, the averment should be in the case as I have
 ‘ instanced, that certain persons were, as I have de-
 ‘ scribed, assembled; and that the publisher, intending
 ‘ to execute these persons so assembled, wrote *so and so*.
 ‘ Here the crime is complete, and consists in an overt
 ‘ act of wickedness evidenced by a writing.’

In answer to all these authorities, the Attorney General may say, that, if Mr. Paine had written his observations with the views of those high persons and under other circumstances, he would be protected and acquitted: to which I can only answer, that no facts or circumstances attending his work are either charged or proved; that you have no jurisdiction whatever but over the natural construction of the work before you, and that I am therefore brought without a flaw in the deduction to the passages which are the particular subject of complaint.

Gentlemen, I am not unmindful how long I have already trespassed upon your patience; and, recollecting the nature of the human mind, and how much, for a thousand reasons, I have to struggle against at this moment, I shall not be disconcerted if any of you should appear anxious to retire from the pain of hearing me farther. It has been said, that my vanity has forwarded my zeal in this cause; but I might appeal even to the authors of those paragraphs, whether a situation ever existed which vanity would have been fonder to fly from—the task of speaking against every known prepossession; with every countenance, as it were, planted and lifted up against me. But I stand at this bar to

give to a criminal arraigned before it, the defence which the law of the country entitles him to. If any of my arguments be indecent, or unfit for the Court to hear, the noble Judge presides to interrupt them: If all, or any of them, are capable of an answer, they will be answered: Or, if they be so unfounded in your own minds, who are to judge of them as not to call for refutation, your verdict in a moment will overthrow all that has been said—We shall then have all discharged our duties——It is your's to judge, but mine only to address your judgments.

When my Lord and I were Counsel for Lord George Gordon in 1781, it was not considered by that Jury, nor imputed to us by any body, that we were contending for the privileges of over-awing the House of Commons, or recommending the conflagration of this city: *I* am doing the same duty now, which *my Lord and I* then did in concert together; and, whatever may become of the cause, I expect to be heard: conscious that no just obloquy can be, or will (*in the end*) be cast upon me for having done my duty in the manner I have endeavoured to perform it.

Gentlemen, I come now to observe on the passages selected by the information; and with regard to the first, I shall dispose of it in a moment.

' All *Hereditary* government is in its nature tyranny.
' An hereditary crown, or an hereditary throne, or by
' what other fanciful name such things may be called,
' have no other significant explanation than that man-
' kind are hereditary *property*. To *inherit* a govern-
' ment is to *inherit* the *people*, as if they were flocks
' and herds.'

And is it to be endured, says the Attorney General, that the people of this country are to be told that they are driven like oxen or sheep? Certainly not. I am of opinion that a more dangerous doctrine cannot be instilled into the people of England. But who instils such a doctrine? I deny it is instilled by Paine. For when he maintains that hereditary monarchy inherits a people like flocks and herds, it is clear from the context (*which is kept out of view*,) that he is combating the proposition in Mr. Burke's book, which asserts, that

the hereditary monarchy of England is fastened upon the people of England by indissoluble compact. Mr. Paine, on the contrary, asserts the King of England to be the *magistrate of the people*, existing by their consent, which is utterly incompatible with their being driven like herds. His argument, therefore, is this, and it retorts on his adversary: he says, such a King as you represent the King of England to be, inheriting the people by virtue of conquest, or of some compact, which, having once existed, cannot be dissolved while the original terms of it are kept, *is an inheritance like flocks and herds*. But I deny that to be the King of England's title, he is *the magistrate of the people*, and that title I respect. It is to your own imaginary King of England therefore, and not to his Majesty, that your unfounded innundos apply. It is the monarchs of Russia and Prussia, and all governments fastened upon unwilling subjects by hereditary indefeasible titles that are stigmatised by Paine as inheriting the people like flocks. The sentence, therefore, must either be taken in the pure abstract, and then it is not only merely speculative, but the application of it to our own government fails altogether, or it must be taken connected with the matter which constitutes the application, and then it is Mr. Burke's King of England, and not his Majesty whose title is denied.

I pass therefore to the next passage, which appears to be an extraordinary selection. It is taken at a leap from page 21 to page 47, and breaks in at the words, "This convention." The sentence selected stands thus, "This convention met at Philadelphia in May 1787, of which General Washington was elected president. He was not at that time connected with any of the state governments, or with Congress. He delivered up his commission when the war ended, and since then had lived a private citizen."

"The convention went deeply into all the subjects: and having after a variety of debate and investigation, agreed among themselves upon the several parts of a federal constitution, the next question was, the manner of giving it authority and practice."

"For this purpose, they did not, like a cabal of

“ courtiers, send for a Dutch Stadtholder, or a German Elector; but they referred the whole matter to the sense and interest of the country.”

This sentence, standing thus by itself, may appear to be a mere sarcasm on King William, upon those who effected the Revolution; and upon the Revolution itself, without any reasoning or deduction: But when the context and sequel are looked at and compared, it will appear to be a serious historical comparison between the Revolution effected in England in 1688, and the late one in America when she established her independence; and no man can doubt that his judgment on that comparison was sincere. But where is the libel on the constitution? For whether King William was brought over here by the sincerest and justest motives of the whole people of England, each man acting for himself, or through the motives and agencies imputed by the defendant, it signifies not one farthing at this time of day to the establishment itself. Blackstone warns us not to fix our obedience or affection to the government on the motives of our ancestors, or the rectitude of their reasonings, but to be satisfied that it is established. This is safe reasoning, and, for my own part, I should not be differently affected to the constitution of my country, which my own understanding approved, whether angels or dæmons had given it birth.

Do any of you love the reformation the less because Henry the Eighth was the author of it? Or because lust and poverty, and not religion, were his motives. He had squandered the treasures of his father, and he preferred Anne Bullen to his Queen; these were the causes which produced it. What then! does that affect the purity of our reformed religion, undermine its establishment, or shake the King's title as prince of the country, to the exclusion of those who held by the religion it had abolished? Will the Attorney General affirm, that I could be convicted of a libel for a whole volume of asperity against Henry the Eighth, merely because he effected the reformation; and if not, why against King William, who effected the Revolution? Where is the line to be drawn? Is one, two, or three centuries to be the statute of limitation? But do not our own histo-

rians detail this very cabal of courtiers, from the records of our own country? If you will turn to Hume's history, volume the eighth, page 188, &c. &c. you will find that he states at great length, the whole detail of intrigues which paved the way for the Revolution, and the interested coalition of parties which gave it effect.

But what of all this, concerning the motives of parties, which is recorded by Hume. The question is, *What is the thing brought about, — Not how it was brought about.* If it stands, as Blackstone argues it, upon the consent of our ancestors, followed up by our own, no individual can withdraw his obedience. If he dislikes the establishment, let him seek elsewhere for another; I am not contending for uncontrouled *conduct*, but for freedom of *opinion*.

With regard to what has been stated of the *Edwards* and *Henrys*, and the other princes under which the author can only discover "*restrictions on power, but no thing of a constitution:*" surely my friend is not in earnest when he selects that as a libel.

Paine insists, that there was no constitution under these princes, and that English liberty was obtained from usurped power by the struggles of the people. So say I. And I think it for the honour and advantage of the country that it should be known.

Was there any freedom after the original establishment of the Normans by conquest? Was not the MAGNA CHARTA wrested from John by open force of arms at Runnymede? Was it not again re-enacted whilst menacing arms were in the hands of the people? Were not its stipulations broken through, and two-and-forty times re-enacted by Parliament, upon the firm demand of the people in the following reigns? I protest it fills me with astonishment to hear these truths brought in question.

I was formerly called upon under the discipline of a college to maintain them, and was rewarded for being thought to have successfully maintained that our present constitution was by no means a remnant of Saxon liberty, nor any other institution of liberty, but the pure consequence of the oppression of the Norman tenures, which spreading the spirit of freedom from one end of

the kingdom to another; enabled our brave fathers, inch by inch, not to re-conquer, *but for the first time to obtain* those privileges which are the unalienable inheritance of all mankind.

But why do we speak of the Edwards and Henrys when Hume himself expressly says, notwithstanding all we have heard to day of the antiquity of our constitution, that our monarchy was nearly absolute till the middle of last century. I have his book in Court, and will read it to you. It is his *Essay on the Liberty of the Press*, vol. I, page 15.

‘All absolute Governments, and such in a great measure was England, till the middle of the last century, *notwithstanding the numerous panegyrics on ANCIENT English Liberty*, must very much depend on the administration.’

This is Hume’s opinion; the conclusion of a grave historian from all that he finds recorded as the materials for history: and shall it be said that Mr. Paine is to be punished for writing to-day what was before written by another, who is now a distinguished classic in the language? All the verdicts in the world will not make that palatable to an impartial public, or to posterity.

The next passage arraigned is this: p. 56. ‘The attention of the government of England, (for I rather chuse to call it by this name, than the English government) appears, since its political connection with Germany, to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purposes. Domestic concerns are neglected; and with respect to regular law, there is scarcely such a thing.’

That the government of this country has, in consequence of its connection with the continent, and the continental wars which it has occasioned, been continually loaded with grievous taxes, no man can dispute; and I appeal to your justice, whether this subject has not been, for years together, the constant topic of unimproved declamation and grumbling?

As to what he says with regard to there hardly being such a thing as regular law, he speaks in the abstract of the complexity of our system; but does not arraign

the administration of justice *in its practice*. But with regard to criticisms and strictures on the general system, it has been echoed over and over again by various authors; and even from the pulpits of our country, that the law of the land is mainly defective, devoid of regularity and precision, and overloaded with a variety of expensive and unnecessary forms. I have a Sermon in Court written during the American war, by a person of great eloquence and piety, part of which I will read to you on this subject, in which he looks forward to an exemption from the intolerable grievances of our old legal system in the infant establishment of the New World.

“ It may be in the purposes of providence, on you
 “ western shores, to raise the bulwark of a purer reformation than ever Britain patronised; to found a less
 “ burthenfome, more auspicious, stable, and incorruptible government than ever Britain has enjoyed; and
 “ to establish there a system of law more just and simple in its principles, less intricate, dubious and dilatory in its proceedings, more mild and equitable in its
 “ sanctions, more easy and more certain in its execution; wherein no man can err through ignorance of what
 “ concerns him, or want justice through poverty or weakness, or escape it by legal artifice, or civil privileges, or interposing power; wherein the rule of
 “ conduct shall not be hidden or disguised in the language of principles and customs that died with the
 “ barbarism which gave them birth; wherein hasty formulas shall not dissipate the reverence that is due
 “ to the tribunals and transactions of justice; wherein obsolete prescripts shall not pervert, nor entangle, nor impede the administration of it, nor in any instance expose it to derision or to disregard; wherein
 “ misrepresentation shall have no share in deciding upon right and truth; and under which no man shall grow
 “ great by the wages of chicanery, or thrive by the quarrels that are ruinous to his employers.”

This is ten times stronger than Mr. Paine; but who ever thought of prosecuting Mr. Cappe?

In various other instances you will find defects in our

jurisprudence pointed out and lamented, and not seldom by persons called upon by their situations to deliver the law in the seat of magistracy: therefore, the author's *general* observation does not appear to be that species of attack upon the magistracy of the country, as to fall within the description of a libel.

With respect to the two Houses of Parliament, I believe I shall be able to shew you that the very person who introduced this controversy, and who certainly is considered by those who now administer the government, as a man usefully devoted to maintain the constitution of the country in the present crisis, has himself made remarks upon these Assemblies; that upon comparison you will think more severe than those which are the subject of the Attorney General's animadversion. The passage in Mr. Paine runs thus:

' With respect to *the two Houses*, of which the English Parliament is composed, they appear to be effectually influenced into one, and, as a legislature, to have no temper of its own. The minister, whoever he at any time may be, touches it as with an opium wand, and it sleeps obedience.

' But if we look at the distinct abilities of the two Houses, the difference will appear so great, as to shew the inconsistency of placing power where there can be no certainty of the judgment to use it. Wretched as the state of representation is in England, it is manhood compared with what is called the House of Lords; and so little is this nick-named House regarded that the people scarcely inquire at any time what it is doing. It appears also to be most under influence, and the furthest removed from the general interest of the nation.'

The conclusion of the sentence, and which was meant by Paine as evidence of the previous assertion, the Attorney General has omitted in the information, and in his speech, it is this: "In the debate on engaging in the Russian and Turkish war, the majority in the House of Peers in favour of it was upwards of ninety, when in the other house, which is more than double its numbers, the majority was sixty three."

The terms, however, in which Mr. Burke speaks of

the House of Lords, are still more expressive. " It is
 " something more than a century ago, since we voted
 " the House of Lords useless. They have now voted
 " themselves so, and the whole hope of reformation"
 (*speaking of the House of Commons*) " is cast upon us." This sentiment, Mr. Burke not only expressed in his place in parliament, where no man can call him to an account; but it has been since, repeatedly printed amongst his other valuable works. And his opinion of BOTH THE HOUSES OF PARLIAMENT, which I am about to read to you, was originally published as a pamphlet, and applied to the settled habitual abuses of these high assemblies. Remember I do not use them as *argumenta ad hominem*, or *ad invidiam* against the author, for if I did, it could be no defence of Mr. Paine. But I use them as high authority, the work *having been the just foundation of substantial and lasting reputation. Would to God that any part of it were capable of being denied or doubted.

' Against the being of parliament I am satisfied no
 ' designs have ever been entertained since the Revolution. Every one must perceive that it is strongly the
 ' interest of the Court to have some second cause interposed between the ministers and the people. The
 ' gentlemen of the House of Commons have an interest
 ' equally strong, in sustaining the part of that intermediate cause. However they may hire out the *usufruct*
 ' of their voices, they never will part with the *fee and inheritance*. Accordingly those who have been of the
 ' most known devotion to the will and pleasure of a
 ' court, have at the same time been most forward in
 ' asserting an high authority in the House of Commons
 ' *When they knew who were to use that authority,*
 ' *and how it was to be employed, they thought it never*
 ' *could be carried too far.* It must be always the wish
 ' of an unconstitutional statesman, that an House of
 ' Commons, *who are entirely dependent upon him, should*
 ' *have every right of the people dependent upon their pleasure.* FOR IT WAS DISCOVERED THAT THE FORMS OF A

* Mr. Burke's Thoughts on the cause of the present discontents, published in 1775.

‘ FREE, AND THE ENDS OF AN ARBITRARY GOVERNMENT,
‘ WERE THINGS NOT ALTOGETHER INCOMPATIBLE.

‘ The power of the crown, almost dead and rotten
‘ as Prerogative has grown up anew, with much more
‘ strength and far less odium, under the name of influ-
‘ ence. An influence which operates without noise
‘ and violence; which converts the very antagonist
‘ into the instrument of power; which contains in itself
‘ a perpetual principle of growth and renovation; and
‘ which the distresses and the prosperity of the country
‘ equally tend to augment, was an admirable substitute
‘ for a Prerogative, that being only the offspring of
‘ antiquated prejudices, had moulded in its original sta-
‘ mina irresistible principles of decay and dissolution.
‘ The ignorance of the people is a bottom but for a
‘ temporary system; but the interest of active men in
‘ the state is a foundation perpetual and infallible.’

Mr. Burke therefore, in page 66, speaking of the
same court party, says :

‘ Parliament was indeed the great object of all these
‘ politics, the end at which they aimed, as well as the
‘ INSTRUMENT by which they were to operate.’

And pursuing the subject in p. 70, proceeds as follows:

‘ They who will not conform their conduct to the
‘ public good, and cannot support it by the preroga-
‘ tive of the crown, have adopted a new plan. They
‘ have totally abandoned the shattered and old-fashion-
‘ ed fortress of prerogative, and made a lodgment in
‘ the strong hold of parliament itself. If they have
‘ any evil design to which there is no ordinary legal
‘ power commensurate, they bring it into parliament.
‘ *There the whole is executed from the beginning to the*
‘ *end. And the power of obtaining there object absolute;*
‘ *and the safety in the proceeding perfect; no rules to con-*
‘ *fine, nor after reckonings to terrify.* For parliament
‘ cannot with any great propriety punish others for
‘ things in which they themselves have been ACCOM-
‘ PLICES. Thus its controul upon the executory power
‘ is lost; because it is made to partake in every confi-
‘ derable act of government, *and impeachment, that great*
‘ *guardian of the purity of the Constitution, is in danger of*
‘ *being lost even to the idea of it.*

‘ Until this time, the opinion of the people, through
 ‘ the power of an Assembly, still in some sort popular
 ‘ led to the greatest honours and emoluments in the
 ‘ gift of the crown. Now the principle is reversed ;
 ‘ and the favour of the court is the only sure way of
 ‘ obtaining and holding those honours which ought to
 ‘ be IN THE DISPOSAL OF THE PEOPLE.’

‘ Mr. Burke, in page 100, observes with great truth,
 that the mischiefs he complained of, did not at all arise
 from the Monarchy, but from the parliament, and that
 it was the duty of the people to look to it. He says,
 ‘ The distempers of monarchy were the great subjects
 ‘ of apprehension and redress, in the *last century* ; in *this*,
 ‘ the distempers of parliament.’

Not the distempers of parliament in this year or the
 last, but in *this century*, i. e. its settled habitual dis-
 temper. ‘ It is not in parliament alone that the reme-
 ‘ dy for parliamentary disorders can be completed ;
 ‘ and hardly indeed can it begin there. Until a confi-
 ‘ dence in government is re-established, the people
 ‘ ought to be *excited* to a more strict and detailed at-
 ‘ tention to the conduct of their representatives. Stan-
 ‘ dards for judging more systematically upon their con-
 ‘ duct ought to be settled in the meetings of counties
 ‘ and corporations, and frequent and correct lists of the
 ‘ voters in all important questions ought to be procured.

‘ By such means something may be done, since it
 ‘ may appear who those are, that by an indiscriminate
 ‘ support of all administrations, have totally banished
 ‘ all integrity and confidence out of public proceedings ;
 ‘ have confounded the best men with the worst ; and
 ‘ weakened and dissolved, instead of strengthening and
 ‘ compacting the general frame of government.’

I wish it was possible to read the whole of this most
 important volume—but the consequences of these truths
 contained in it were all eloquently summed up by the
 author in his speech upon the reform of the household.

‘ But what I confess was uppermost with me, what
 ‘ I bent the whole course of my mind to, was the re-
 ‘ duction of that corrupt influence which is itself the
 ‘ perennial spring of all prodigality and disorder ; which
 ‘ loads us more than millions of debt ; which takes a-

‘ way vigour from our arms, wisdom from our councils,
 ‘ and every shadow of authority and credit from the
 ‘ most venerable parts of our constitution.’

The same important truths were held out to the whole public, upon a still later occasion, by the person now at the head of his Majesty’s councils; and so high (as it appears) in the confidence of the nation. *He*, not in the abstract like the author before you, but upon the spur of the occasion, and in the teeth of what had been just declared in the House of Commons, came to, and acted upon resolutions which are contained in this book.* Resolutions pointed to the purification of a parliament, dangerously corrupted into the very state described by Mr. Paine. Remember here too, that I impute no censure to Mr. Pitt. It was the most brilliant passage in his life, and I should have thought his life a better one, if he had continued uniform in the support of opinions, which it is said he has not changed, and which certainly have had nothing to change them. But at all events, I have a right to make use of the authority of his splendid talents and situation not merely to protect the defendant, but the public, and to resist the precedent, That what one man may do in England with approbation and glory, shall conduct another man to a pillory or a prison.

It was the abuses pointed out by the man before you, that led that Right Hon. Gentleman to associate with many others of high rank, under the banners of the Duke of Richmond, whose name stands at the head of the list; and to pass various public resolutions, concerning the absolute necessity of purifying the House of Commons; and we collect the plan from a preamble entered in the book, ‘ Whereas the life, liberty and
 ‘ property of every man is or may be affected by the
 ‘ law of the land in which he lives, and every man is
 ‘ bound to pay obedience to the same.

‘ And whereas, by the constitution of this kingdom
 ‘ the right of making laws is vested in three estates,
 ‘ of King, Lords, and Commons, in parliament assembled, and the consent of all the three said estates,

* Mr. Erskine took up a book.

‘comprehending the whole community, is necessary to make laws to bind the whole community. And whereas the House of Commons represents all the Commons of the realm, and the consent of the House of Commons binds the consent of all the Commons of the realm, and in all cases on which the legislature is competent to decide.

‘And whereas no man is, or can be actually represented who hath not a vote in the election of his representative.

‘And whereas it is the right of every commoner of this realm (infants, persons of insane mind, and criminals incapacitated by law, only excepted) to have a vote in the election of the representative who is to give his consent to the making of laws by which he is to be bound.

‘And whereas the number of persons who are suffered to vote for electing the members of the House of Commons, do not at this time amount to one-sixth part of the whole Commons of this realm, whereby far the greater part of the said Commons are deprived of their right to elect their representatives; and the consent of the majority of the whole community to the passing of laws, is given by persons whom they have not delegated for such purposes; and the majority of the said community, and to which the said majority have not in fact consented by themselves or by their representatives.

‘And whereas the state of election of members of the House of Commons, hath in process of time so grossly deviated from its simple and natural principle of representation and equality, that in several places, the members are returned by the property of one man; that the smallest boroughs send as many members as the largest counties, and that a majority of the representatives of the whole nation are chosen by a number of votes not exceeding twelve thousand.’

These with many others, were published, not as abstract, speculative writings, but within a few days after the House of Commons had declared that no such rights existed, and that no alteration was necessary in the representation. It was then that they met at the

Thatched House, and published their opinions and resolutions to the country at large.—Were any of them prosecuted for these proceedings? Certainly not, (for they were legal proceedings.) But I desire you as men of honour and truth, to compare all this with Mr. Paine's expression of the Minister's touching Parliament with his opiate wand, and let equal justice be done—that is all I ask—~~let~~ all be punished or none—do not let Mr. Paine be held out to the contempt of the public upon the score of his observations on parliament, while others are enjoying all the sweets which attend a supposed attachment to their country, who have said the same things, and reduced their opinions to practice.

But now every man is to be cried down for such opinions. I observed that my learned friend significantly raised his voice in naming Mr. Horne Tooke, as if to connect him with Paine, or Paine with him. This is exactly the same course of justice; for after all he said nothing of Mr. Tooke. What could he have said, but that he was a subscriber with the great names, I have read in these proceedings which they have thought fit to desert.

Gentlemen, let others hold their opinions, and change them at their pleasure; I shall ever maintain it to be the dearest privilege of the people of Great Britain to watch over every thing that affects their good government, either in the system, or in the practice; and that for this purpose the press must be free. It has always been so, and much evil has been corrected by it.—If government finds itself annoyed by it, let it examine its own conduct, and it will find the cause,—let it amend it, and it will find the remedy.

Gentlemen, I am no friend to sarcasms in the discussion of grave subjects, but you must take writers according to the view of the mind at the moment; Mr. Burke as often as any body indulges in it:—hear his reason in his speech on reform, for not taking away the salaries from Lords who attend upon the British Court. “You would,” said he, “have the court deserted by all the nobility of the kingdom.

“Sir, the most serious mischiefs would follow from such a desertion. Kings are naturally lovers of low

“ company ; they are so elevated above all the rest of
 “ mankind, that they must look upon all their subjects
 “ as on a level : they are rather apt to hate than to
 “ love their nobility, on account of the occasional re-
 “ sistance to their will, which will be made by their
 “ virtue, their petulance, or their pride. It must in-
 “ deed be admitted, that many of the nobility are as
 “ perfectly willing to act the part of flatterers, tale-
 “ bearers, parasites, pimps, and buffoons, as any of the
 “ lowest and vilest of mankind can possibly be. But
 “ they are not properly qualified for this object of their
 “ ambition. The want of a regular education, and
 “ early habits, with some lurking remains of their dig-
 “ nity, will never permit them to become a match for
 “ an Italian eunuch, a mountebank, a fidler, a player,
 “ or any regular practitioner of that tribe. The
 “ Roman emperors, almost from the beginning, threw
 “ themselves into such hands ; and the mischief increa-
 “ sed every day, till its decline, and its final ruin. It
 “ is, therefore, of very great importance (provided
 “ the thing is not overdone,) to contrive such an esta-
 “ blishment as must, almost whether a prince will or
 “ not, bring into daily and hourly offices about his per-
 “ son, a great number of his first nobility ; and it is
 “ rather an useful prejudice that gives them a pride in
 “ such a servitude : though they are not much the bet-
 “ ter for a court, a court will be much the better for
 “ them. I have, therefore, not attempted to reform
 “ any of the offices of honour about the King’s per-
 “ son.”

What is this but saying that a king is an animal so
 incurably addicted to low company, as generally to
 bring on by it the ruin of nations ; but nevertheless, he
 is to be kept as a necessary evil, and his propensities
 bridled by surrounding him with a parcel of miscreants
 still worse if possible, but better than those he would
 chuse for himself.—This therefore, if taken by itself,
 would be a most abominable and libellous sarcasm on
 kings and nobility : but look at the whole speech, and
 you observe a great system of regulation : and no man,
 I believe, ever doubted Mr. Burke’s attachment to

monarchy. To judge, therefore, of any part of a writing, the whole must be read.

With the same view I mean to read to you the beginning of Harrington's *Oceana*: but it is impossible to name this well known author without exposing to just contempt and ridicule the ignorant or profligate misrepresentations which are vomited forth upon the public, to bear down every man as desperately wicked, who in any age or country has countenanced a republic, for the mean purpose of prejudging this trial.

[Mr. Erskine took up a book, but laid it down again without reading from it, saying something to the gentleman who sat near him, in a low voice, which I did not hear.]

Is this the way to support the English constitution? Are these the means by which Englishmen are to be taught to cherish it? I say, if the man upon trial were stained with blood instead of ink,—if he were covered over with crimes which human nature would start at the naming of, the means employed against him would not be the less disgraceful.

For this notable purpose then, Harrington, not above a week ago, was handed out to us as a low, obscure wretch, involved in the murder of the monarch, and the destruction of the monarchy, and as addressing his despicable works at the shrine of an usurper. Yet this very Harrington, this low blackguard, was descended (you may see his pedigree at the Herald's office for sixpence,) from eight Dukes, three Marquisses, seventy Earls, twenty-seven Viscounts, and thirty-six Barons, sixteen of whom were Knights of the Garter; a descent which I think would save a man from disgrace in any of the circles of Germany. But what was he besides? —A blood stained ruffian! Oh brutal ignorance of the history of the country! He was the most affectionate servant of Charles the first, from whom he never concealed his opinions? for it is observed by Wood, that the King greatly affected his company; but when they happened to talk of a commonwealth, he would scarcely endure it.—‘I know not,’ says Toland, ‘which most to commend; the King for trusting an honest

‘man, though a republican; or Harrington for owning his principles while he served a king.’

But did his opinions affect his conduct?—Let history again answer.—He preserved his fidelity to his unhappy Prince to the very last, after all his fawning courtiers had left him to his enraged subjects. He staid with him while a prisoner in the Isle of Wight: came up by stealth to follow the fortunes of his Monarch and master; even hid himself in the boot of the coach when he was conveyed to Windsor; and ending as he began, fell into his arms and fainted on the scaffold.

After Charles’s death, the Oceana was written, and, as if it were written from justice and affection to his memory: for it breathes the same noble and spirited regard, and asserts that it was not Charles that brought on the destruction of the monarchy, but the feeble and ill-constituted nature of monarchy itself.

But the book was a flattery to Cromwell.—Once more and finally, let history decide.

It was seized by the Usurper as a libel, and the way it was recovered is remarkable. I mention it to show, that Cromwell was a wise man in himself, and knew on what governments must stand for their support.

Harrington waited on his daughter to beg for his book, and on entering her apartment, snatched up her child and ran away. On her following him with surprise and terror, he turned to her and said, “I know what you feel as a mother, feel then for me; your father has got my child:” meaning the Oceana. The Oceana was afterwards restored on her petition; Cromwell answering with the sagacity of a sound politician, “Let him have his book; if my government is made to stand, it has nothing to fear from *paper shot*.”—He said true.—No good government will ever be battered by paper shot. Montesquieu says, that, “In a free nation, it matters not whether individuals reason well or ill; it is sufficient that they do reason. Truth arises from the collision, and from hence springs liberty, which is a security from the effect of reasoning.” The Attorney General read extracts from Mr. Adams’s answer to this book. Let others do like Mr. Adams: I am not insisting upon the infallibility of Mr.

Paine's doctrines; if they are erroneous, let them be answered, and truth will spring from the collision.

A disposition in a nation to this species of controversy is no proof of sedition or degeneracy, but quite the reverse, as is mentioned by Milton, (I omitted to cite the passage with the others,) who, in speaking of this subject, rises into that inexpressibly sublime stile of writing, wholly peculiar to himself. He was indeed no plagiarist from any thing human: he looked up for light and expression, as he himself wonderfully describes it, by devout prayer to that Great Being, who is the source of all utterance and knowledge; and who sendeth out his seraphim with the hallowed fire of his altars to touch and purify the lips of whom he pleases.—

'When the chearfulness of the people,' says this mighty poet, 'is so sprightly up, as that it has not only wherewith to guard well its own freedom and safety, but to spare, and to bestow upon the solideft and sublimest points of controversy and new invention, it betokens us not degenerated nor drooping to a fatal decay, but casting off the old and wrinkled skin of corruption to outlive these pangs, and wax young again, entering the glorious ways of truth and prosperous virtue, destined to become great and honourable in these latter ages. Methinks I see, in my mind, a noble and puissant nation rousing herself, like a strong man after sleep, and shaking her invincible locks: methinks I see her as an eagle muing her mighty youth, and kindling her undazzled eyes at the full mid-day beam; purging and unscaling her long-abused sight at the fountain itself of heavenly radiance; while the whole noise of timorous and flocking birds, with those also that love the twilight, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and schisms.'

Gentlemen, what Milton only saw in his mighty imagination, I see in fact; what he expected, but which never came to pass, I see now fulfilling: methinks I see this noble and puissant nation, not degenerated and drooping to a fatal decay, but casting off the wrinkled skin of corruption to put on again the vigour of her youth.

And it is, because others as well as myself see this, that we have all this uproar. France and its constitution are the mere pretences. It is, because Britons begin to recollect the inheritance of their own constitution, left them by their ancestors : It is, because they are awakened to the corruptions which have fallen upon its most valuable parts, that forsooth the nation is in danger of being destroyed by a single pamphlet.

Gentlemen, I have marked the course of this alarm : It began with the renovation of those exertions for the public, which the authors of the alarm had themselves originated and deserted ; and they became louder and louder when they saw these principles avowed and supported by my admirable and excellent friend Mr. Fox ; the most eminently honest and enlightened statesman that history brings us acquainted with : a man whom to name is to honour, but whom, in attempting adequately to describe, I must fly to Mr. Burke, my constant refuge when eloquence is necessary : a man, who, to relieve the sufferings of the most distant nation, ' put ' to the hazard his ease, his security, his interest, his ' power, even his darling popularity for the benefit of ' a people whom he had never seen.' How much more then for the inhabitants of his native country : yet this is the man who has been censured and disavowed in the manner we have lately seen.

Gentlemen, I have but a few more words to trouble you with : I take my leave of you with declaring, that all this freedom which I have been endeavouring to assert, is no more than the freedom which belongs to our own inbred constitution : I have not asked you to acquit Mr. Paine upon any new lights, or upon any principle but the law, which you are sworn to administer : My great object has been to inculcate, that wisdom and policy, which are the parents of the law of Great Britain, forbid this jealous eye over her subjects ; and that, on the contrary, they cry aloud in the language of the poet, employed by Lord Chatham on the memorable subject of America, unfortunately without effect :

" Be to their faults a little blind,
 " Be to their virtues very kind ;
 " Let all their thoughts be unconfin'd,
 " And clap your padlock on the mind."

Engage them by their affections, convince their reason, and they will be loyal from the only principle that can make loyalty sincere, vigorous, or rational, a conviction that it is their truest interest, and that their form of government is for their common good. Constraint is the natural parent of resistance, and a pregnant proof, that reason is not on the side of those who use it. You must all remember, Gentlemen, Lucian's pleasant story; Jupiter and a countryman were walking together, conversing with great freedom and familiarity upon the subject of heaven and earth. The countryman listened with attention and acquiescence, while Jupiter strove only to convince him; but happening to hint a doubt, Jupiter turned hastily round and threatened him with his thunder.—“Ah! ha!” says the countryman, “now Jupiter, I know that you are wrong; you're always wrong when you appeal to your thunder.”

This is the case with me—I can reason with the people of England, but I cannot fight against the thunder of authority.

Gentlemen, this is my defence for free opinions. With regard to myself, I am, and ever have been, obedient and affectionate to *the law*: to that rule of action, as long as I exist, I shall ever give my voice and my conduct; but I shall ever do as I have done to-day, maintain the dignity of my high profession, and perform, as I understand them, all its important duties.

[Mr. Attorney General arose immediately to reply to Mr. Erskine, when Mr. Campbell (the foreman of the Jury) said,—my Lord, I am authorised by the Jury here, to inform the Attorney General, that a reply is not necessary for them, unless the Attorney General wishes to make it, or your Lordship.—Mr. Attorney General sat down, and the Jury gave in their verdict, —*Guilty.*]